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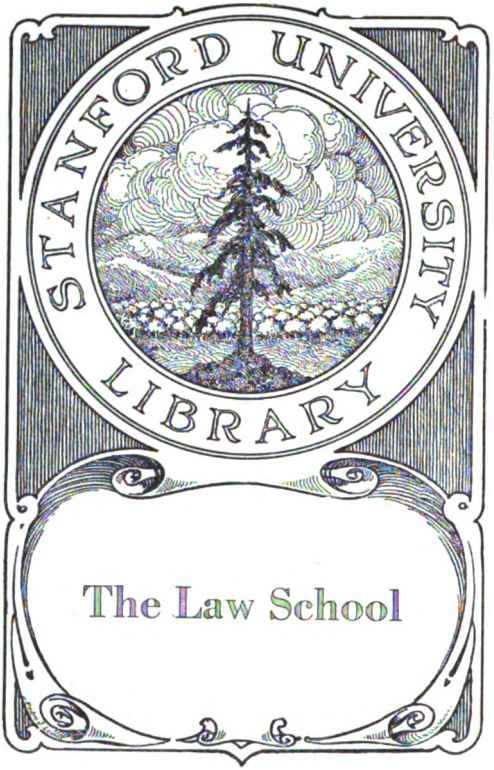

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TREASURY DECISIONS

UNDER

Customs and Other Laws.

Vol. 13—January to June, 1907.

GEORGE B. CORTELYOU,
Secretary of the Treasury.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1907.

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LETTER OF INSTRUCTION.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 29, 1907.

The within decisions are published for the information and guidance of officers of the customs and others concerned.

Decisions of the Board of United States General Appraisers adverse to the Government take effect thirty days after their respective dates, if not appealed from, in accordance with section 15 of the act of June 10, 1890.

Decisions of United States circuit courts and of United States circuit courts of appeals adverse to the Government are not accepted as final until acquiescence has been published.

GEORGE B. CORTELYOU,
Secretary of the Treasury.

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CUSTOMS.

(T. D. 27807.)

Values of foreign coins.

[Circular No. 1.]

TREASURY DEPARTMENT, *January 1, 1907.*

In pursuance of the provisions of section 25 of the act of August 28, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on and after January 1, 1907, expressed in any of such metallic currencies.

LESLIE M. SHAW, *Secretary.*

ESTIMATE BY DIRECTOR OF THE MINT OF VALUES OF FOREIGN COINS.

Country.	Standard	Monetary unit.		Value in terms of U.S. gold dollar.	Coins.
Argentine Republic.	Gold	Peso		$0.965	Gold: argentine ($4.824) and ½ argentine. Silver: peso and divisions
Austria-Hungary.	Gold	Crown		.203	Gold: 10 and 20 crowns. Silver: 1 and 5 crowns.
Belgium	Gold	Franc		.193	Gold: 10 and 20 francs. Silver: 5 francs.
Bolivia	Silver	Boliviano		.510	Silver: boliviano and divisions.
Brazil	Gold	Milreis		.546	Gold: 5, 10, and 20 milreis. Silver: ½, 1, and 2 milreis.
British Possessions, N. A. (except Newfoundland).	Gold	Dollar		1.000	
Central American States—					
Costa Rica	Gold	Colon		.465	Gold: 2, 5, 10, and 20 colons ($9.307) Silver: 5, 10, 25, and 50 centimos.
British Honduras	Gold	Dollar		1.000	
Guatemala, Honduras, Nicaragua, Salvador	Silver	Peso		.510	Silver: peso and divisions.
Chile	Gold	Peso		.365	Gold: escudo ($1.825), doubloon ($3.650), and condor ($7.300). Silver: peso and divisions.
China	Silver	Tael	Amoy	.836	
			Canton	.883	
			Cheefoo	.799	
			Chin Kiang	.816	
			Fuchau	.773	
			Haikwan (customs).	.850	
			Hankow	.782	
			Kiaochow	.810	
			Nankin	.827	
			Niuchwang	.784	
			Ningpo	.808	
			Peking	.815	
			Shanghai	.763	
			Swatow	.772	
			Takau	.841	
			Tientsin	.810	
		Dollar.	Hongkong	.550	
			British	.550	
			Mexican	.554	

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ESTIMATE BY DIRECTOR OF THE MINT OF VALUES OF FOREIGN COINS—Continued.

Country.	Standard.	Monetary unit.	Value in terms of U.S. gold dollar.	Coins.
Colombia	Gold	Dollar	$1.000	Gold: condor ($9.647) and double condor. Silver: peso.
Denmark	Gold	Crown	.268	Gold: 10 and 20 crowns.
Ecuador	Gold	Sucre	.487	Gold: 10 sucres ($4.8665). Silver: sucre and divisions.
Egypt	Gold	Pound (100 piasters).	4.943	Gold: pound (100 piasters), 5, 10, 20, and 50 piasters. Silver: 1, 2, 5, 10, and 20 piasters.
Finland	Gold	Mark	.193	Gold: 20 marks ($3.859), 10 marks ($1.93).
France	Gold	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
German Empire	Gold	Mark	.238	Gold: 5, 10, and 20 marks.
Great Britain	Gold	Pound sterling	4.866½	Gold: sovereign (pound sterling) and ½ sovereign.
Greece	Gold	Drachma	.193	Gold: 5, 10, 20, 50, and 100 drachmas. Silver: 5 drachmas.
Haiti	Gold	Gourde	.965	Gold: 1, 2, 5, and 10 gourdes. Silver: gourde and divisions.
India (British)	Gold	Pound sterling*	4.866½	Gold: sovereign (pound sterling). Silver: rupee and divisions.
Italy	Gold	Lira	.193	Gold: 5, 10, 20, 50, and 100 lire. Silver: 5 lire.
Japan	Gold	Yen	.498	Gold: 5, 10, and 20 yen. Silver: 10, 20, and 50 sen.
Liberia	Gold	Dollar	1.000	
Mexico	Gold	Peso †	.498	Gold: 5 and 10 pesos. Silver: dollar ‡ (or peso) and divisions.
Netherlands	Gold	Florin	.402	Gold: 10 florins. Silver: 2½, 1 florin and divisions.
Newfoundland	Gold	Dollar	1.014	Gold: 2 dollars ($2.027).
Norway	Gold	Crown	.268	Gold: 10 and 20 crowns.
Panama	Gold	Balboa	1.000	Gold: 1, 2½, 5, 10, and 20 balboas. Silver: peso and divisions.
Persia	Silver	Kran	.094	Gold: ½, 1, and 2 tomans ($3.402). Silver: ¼, ½, 1, 2, and 5 krans.
Peru	Gold	Libra	4.866½	Gold: ½ and 1 libra. Silver: sol and divisions.
Philippine Islands.	Gold	Peso	.500	Silver peso: 10, 20, and 50 centavos.
Portugal	Gold	Milreis	1.080	Gold: 1, 2, 5, and 10 milreis.
Russia	Gold	Ruble	.515	Gold: 5, 7½, 10, and 15 rubles. Silver: 5, 10, 15, 20, 25, 50, and 100 copecks.
Spain	Gold	Peseta	.193	Gold: 25 pesetas. Silver: 5 pesetas.
Straits Settlements.	Gold	Pound sterling §	4.866½	Gold: Sovereign (pound sterling). Silver: Dollar and divisions.
Sweden	Gold	Crown	.268	Gold: 10 and 20 crowns.
Switzerland	Gold	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
Turkey	Gold	Piaster	.044	Gold: 25, 50, 100, 250, and 500 piasters.
Uruguay	Gold	Peso	1.034	Gold: peso. Silver: peso and divisions.
Venezuela	Gold	Bolivar	.193	Gold: 5, 10, 20, 50, and 100 bolivars. Silver: 5 bolivars.

NOTE.—The coins of silver-standard countries are valued by their pure silver contents, at the average market price of silver for the three months preceding the date of this circular.

* The sovereign is the standard coin of India, but the rupee ($0.3244½) is the current coin, valued at 15 to the sovereign.

† Seventy-five centigrams fine gold ‡ Value in Mexico, $0.498.

§ The current coin of the Straight Settlements is the silver dollar issued on Government account, and which has been given a tentative value of $0.567758½.

(T. D. 27808.)

Common carrier.

Approving bond of Maine Central Railroad Company for transportation of unappraised merchandise from Portland, Me., under act of June 10, 1880.

TREASURY DEPARTMENT, *January 2, 1907.*

SIR: The bond of the Maine Central Railroad Company, transmitted with your letter of the 26th ultimo, in the matter of bonding

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said company for the transportation of unappraised merchandise from Portland, Me., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Portland, Me., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars or vessels owned or controlled by said company and running over its line of railroad and such connecting lines of railroad and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(18510.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Portland, Me.*

(T. D. 27809.)

Drawback on round bale bags.

Drawback on round bale bags manufactured by the Reagan Round Bale Company, of Houston, Tex., from imported burlap.—T. D. 25076 of March 1, 1904, extended.

TREASURY DEPARTMENT, *January 2, 1907.*

SIR: The Department's regulations of March 1, 1904 (T. D. 25076), providing for the allowance of drawback on round bale bags manufactured by the American Cotton Company, of New York, wholly from imported burlap, are hereby extended, so far as applicable, to cover the exportation of similar bags manufactured by the Reagan Round Bale Company, of Houston, Tex., from imported burlap, in accordance with their sworn statement, dated November 19, 1906, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(42580.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 27810.)

Drawback on tin labels.

Drawback on triangular and elliptical labels, either attached to tin cans or drums, or in bulk, manufactured by the Standard Oil Company, of New York, wholly with the use of imported tagger's tin and lead in soldering.

TREASURY DEPARTMENT, *January 3, 1907.*

SIR: On the exportation of triangular and elliptical labels, either attached to tin cans or drums, or in bulk, manufactured by the

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Standard Oil Company, of New York, wholly with the use of imported tagger's tin and lead in soldering, a drawback will be allowed equal in amount to the duties paid on the imported materials used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the number of cans and drums to which each kind of label is attached, or the number of each kind of label in bulk contained in each package separately and in the aggregate.

The drawback entry must show the total number of each kind of label by cans, drums, or in bulk exported, and the quantity of tagger's tin and lead contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated November 14, 1906, transmitted herewith for filing in your office.

In liquidation, the quantity of tagger's tin and lead used in the manufacture of the solder which may be taken as the basis for the allowance of drawback may equal the quantities declared in the drawback entry, after official verification of exported quantities, provided that it shall not exceed the quantities of tin for each kind of label shown in said sworn statement, nor of the lead in the manufacture of the solder as shown therein and in the monthly affidavits which shall be filed, as now required by T. D. 14592 of January 26, 1894.

Respectfully, JAMES B. REYNOLDS,
(42814.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27811.)

Hearings, etc., in classification and reappraisement cases by United States General Appraisers during the year 1907.

[Circular No. 3.]

TREASURY DEPARTMENT, *January 4, 1907.*

To officers of the customs and others concerned:

In accordance with T. D. 27097, dated February 8, 1906, appointing fixed calendar dates for the hearing of customs appeals at the ports outside of the port of New York, the hereinafter-mentioned dates at the hereinafter-mentioned ports are hereby fixed and designated for the year 1907. In all respects not herein expressly or by necessary implication modified, said T. D. 27097 is continued in full force and effect.

Baltimore (office of the appraiser): January 12, February 9, March 9, April 13, May 11, June 8, July 13, September 14, October 12, November 9, and December 14.

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Boston (office of the appraiser): January 18, February 15, March 15, April 19, May 17, June 21, July 19, September 20, October 18, November 15, and December 20.

Chicago (office of the appraiser): February 6, March 6, April 3, June 5, July 3, September 4, November 6, and December 4.

Los Angeles (office of the collector): February 26, June 25, and November 23.

New Orleans (office of the appraiser): April 9 and September 11.

Philadelphia (office of the appraiser): January 11, February 8, March 8, April 12, May 10, June 7, July 12, September 13, October 11, November 8, and December 13.

Portland, Oreg. (office of the appraiser): February 15, June 14, and November 13.

St. Louis (office of the surveyor): April 6 and September 7.

St. Paul (office of the collector): February 9, June 8, and November 9.

San Francisco (office of the appraiser): February 20, June 19, and November 18.

Seattle (office of the appraiser): February 13, June 12, and November 11.

LESLIE M. SHAW, *Secretary.*

(T. D. 27812.)

Drawback on lacto-marrow.

Drawback on lacto-marrow manufactured by the Lacto-Marrow Company, of New York, with the use of imported alcohol and rum.

TREASURY DEPARTMENT, *January 5, 1907.*

SIR: On the exportation of lacto-marrow manufactured by the Lacto-Marrow Company, of New York, with the use of imported alcohol and rum in combination with domestic materials, a drawback will be allowed equal in amount to the duties paid on the imported alcohol and rum so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the number of 12-ounce bottles of lacto-marrow contained in each case and in the entire shipment.

The drawback entry must show the total number of 12-ounce bottles of lacto-marrow exported, and the total quantities of wine gallons of both the imported alcohol and rum separately consumed in the manufacture, together with the proof degree of both the alcohol and rum used, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated December 20, 1906, transmitted herewith for filing in your office.

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In liquidation, the quantities of alcohol and rum which may be taken as the basis for the allowance of drawback may equal the quantity of absolute alcohol contained in the lacto-marrow, to which may be added 1 per cent as compensation for loss in the manufacture thereof.

Samples may be taken, or sworn samples furnished, as ordered by the collector for required determinations.

Respectfully, JAMES B. REYNOLDS,
(43287.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27813.)

Drawback on dress shields and infants' specialties.

Drawback on dress shields and infants' specialties manufactured by the Canfield Rubber Company of Bridgeport, Conn., with the use of imported binding, beading, tape, lace, and Japanese silk.

TREASURY DEPARTMENT, *January 7, 1907.*

SIR: On the exportation of dress shields and infants' specialties manufactured by the Canfield Rubber Company, of Bridgeport, Conn., in part with the use of imported binding, beading, tape, lace, and Japanese silk, a drawback will be allowed equal in amount to the duties paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the contents of each package separately and in the aggregate.

The drawback entry must show the total number of dress shields and infants' specialties of each name, number, and kind exported, and the quantity of each kind of imported material consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated December 19, 1906, transmitted herewith for filing in your office.

In liquidation, the quantities of imported galloon binding, beading, tape, and Japanese silk consumed in the manufacture, which may be taken as the basis for the allowance of drawback, may equal the quantities declared in the drawback entry, after official verification of exported quantities, provided that in no case shall they exceed the quantities shown in the manufacturers' sworn statement hereinbefore referred to.

Respectfully, JAMES B. REYNOLDS,
(43283.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27814.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 27815.)

Water of ayr stones.

Decision of United States circuit court for the southern district of New York in Charles A. Johnson & Co. *v.* United States (suit 4083; T. D. 27834) acquiesced in.

TREASURY DEPARTMENT, *January 10, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of Charles A. Johnson & Co. *v.* United States (suit 4083; T. D. 27834) was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of certain so-called "water of ayr stones," which were returned by the appraiser as "manufactured articles," and assessed for duty at the rate of 20 per cent ad valorem under section 6 of the tariff act of July 24, 1897. The importers protested, claiming the merchandise to be entitled to free entry under paragraph 614 of the same act, under the enumeration for "minerals, crude, or not advanced in value or condition by refining or grinding or by other process of manufacture," which claim was sustained by the United States circuit court in this case.

The Attorney-General advises the Department that no further proceedings will be directed in the case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(22356.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27816.)

Drawback on shoes.

Drawback on shoes manufactured by Alfred J. Foster, of Lowell, Mass., from imported leather, the tips being of domestic leather.

TREASURY DEPARTMENT, *January 11, 1907.*

SIR: The Department's regulations of May 3, 1906 (T. D. 27321), providing for the allowance of drawback on the exportation of shoes

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manufactured by Alfred J. Foster, of Lowell, Mass., from imported leather, are hereby extended to cover the same styles of shoes when manufactured with a domestic patent enamel leather tip.

It shall be plainly stated in the manufacturer's statement, preliminary and drawback entries, that the tips were made from domestic material, and in liquidation there shall be deducted from the quantity of imported material provided in said regulations for each dozen pairs of women's, misses', and children's shoes having the domestic tip the following quantities: Women's shoes, $3\frac{2}{16}$ ounces; misses' shoes, $2\frac{14}{16}$ ounces, and children's shoes, $2\frac{4}{16}$ ounces.

Respectfully, JAMES B. REYNOLDS,
(34179.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 27817.)

Drawback on globes.

Drawback on globes manufactured by the Weber Costello Company, of Chicago Heights, Ill., with the use of imported maps.

TREASURY DEPARTMENT, *January 12, 1907.*

SIR: On the exportation of globes manufactured by the Weber Costello Company, of Chicago Heights, Ill., with the use of imported maps, a drawback will be allowed equal in amount to the duties paid on the imported maps so used less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping cases and the number of globes in each case and in the entire shipment. The cases should be plainly marked to show their contents.

The drawback entry must show the number of globes of each size exported and the number of imported maps used in the manufacture thereof, and that the exported globes were manufactured of materials and in the manner set forth in the sworn statement, dated December 14, 1906, transmitted herewith for filing in your office.

In liquidation, the number of imported maps which may be taken as the basis for the allowance of drawback may equal the number declared in the drawback entry after official verification of the exported quantities and examination of the foreign printers' seal on the maps used on the exported globes, but in no case shall such quantity exceed one map for each globe exported.

Respectfully, JAMES B. REYNOLDS,
(42916.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 27818.)

Tea experts.

Board of tea experts for the calendar year 1907, appointed under the act of March 2, 1897.

TREASURY DEPARTMENT, *January 12, 1907.*

SIR: You are hereby appointed a member of the board of tea experts to prepare and submit to the Secretary of the Treasury standard samples of tea under the act of Congress approved March 2, 1897, for a period of one year from January 1, 1907, with compensation at the rate of $50 per annum, together with all necessary expenses while engaged on duty under this authority, payable from the appropriation to defray the expenses of collecting the revenue from customs, a new oath of office to be taken before entering upon the duties of the position.

You are requested to meet with the other members of the Board at the office of the appraiser of merchandise at the port of New York on Monday, February 11, 1907, for the purpose of organization and preparing and submitting standard samples of tea as provided in the above act

Respectfully, JAMES B. REYNOLDS,
Acting Secretary.

Mr. GEORGE HEWLETT, *New York.*

The board of tea experts, as constituted for the calendar year 1907, is as follows:

Mr. George H. Macy, care of Carter, Macy & Co., New York; Mr. Charles B. Platt, San Francisco, Cal.; Mr. George W. Caswell, San Francisco, Cal.; Mr. K. S. Walbank, Chicago, Ill.; Mr. A. P. Irwin, care of Irwin, McBride, Catherwood & Co., Philadelphia, Pa.; Mr. Herbert G. Woodworth, 28 Broad street, Boston, Mass.; Mr. George Hewlett, 132 Front street, New York.

(T. D. 27819.)

Smokers' articles.

Decision of United States circuit court for the southern district of New York in United States *v.* Knauth, Nachod & Kühne (suit 4263; T. D. 27769) acquiesced in.

TREASURY DEPARTMENT, *January 15, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states

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that the case of United States *v.* Knauth, Nachod & Kühne (suit 4263; T. D. 27769) was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of "pipe bits" or "mouth pieces," designed and available for use only as mouth pieces for pipes. Duties were assessed thereon as articles of which pyroxylin is the component material of chief value under paragraph 17 of the act of July 24, 1897. The importers protested, claiming the merchandise to be "smokers' articles," dutiable as such under paragraph 459 of the same act, which claim was sustained by the United States circuit court in this case.

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(19794.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27820.)

Drawback on leather.

Drawback on sole leather manufactured by William F. Mosser & Co., of Boston, Mass., with the use of imported quebracho extract.—T. D. 25855 of December 19, 1904, extended.

TREASURY DEPARTMENT, *January 15, 1907.*

SIR: The Department's regulations of December 19, 1904 (T. D. 25855), providing for the allowance of drawback on sole leather manufactured from imported hides by the United States Leather Company with the use of imported solid quebracho extract, are hereby extended so far as applicable to cover the exportation of similar leather manufactured by William F. Mosser & Co., of Boston, Mass., with the use of imported quebracho extract, in accordance with their sworn statement, dated January 10, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of quebracho extract which may be taken as the basis for the allowance of drawback shall not exceed 3½ pounds to each side of leather.

Respectfully, JAMES B. REYNOLDS,
(30853.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 27821—G. A. 6513.)

Crude peacock quills—Feathers.

1. Only feathers which have been dressed, colored, or otherwise advanced or manufactured are subject to duty at the rate of 50 per cent ad valorem under the provisions of paragraph 425, tariff act of 1897.

2. Peacock feathers, ornamental in character but in a crude condition, held to be dutiable at the rate of 15 per cent ad valorem under said paragraph 425.—Brodie *v.* United States (135 Fed. Rep., 914; T. D. 25896) and Spero *v.* United States (135 Fed. Rep., 915; T. D. 25897), followed.

United States General Appraisers, New York, January 12, 1907.

In the matter of protest 206240 of Zucker & Josephy against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise involved in this protest is peacock quills. Duty was assessed thereon at the rate of 50 per cent ad valorem under the provisions of paragraph 425 of the tariff of 1897 as ornamental feathers. It is claimed that said feathers are crude, and should therefore have been assessed for duty under the provisions in said paragraph 425 for "feathers * * * crude or not dressed, colored or otherwise advanced or manufactured in any manner."

The evidence in the case shows conclusively that the feathers in question were imported in the crude state. In an unpublished decision on a protest filed by George Silva & Co., dated March 6, 1902 (protest 86166*f*), the Board held that crude peacock feathers, being ornamental in character, were subject to duty at the rate of 50 per cent, as here assessed, and said decision was appealed to the United States circuit court, where the decision of the Board was affirmed in open court without opinion. See Silva *v.* United States (127 Fed. Rep., 781; T. D. 24921). Subsequently thereto the Board held in G. A. 5540 (T. D. 24910) and in Abstract 3675 (T. D. 25772) that crude eagle and condor quills and crude ostrich feathers, being ornamental in character, were subject to the higher rate of duty. Each of these decisions was appealed to the United States circuit court and there reversed. See Brodie *v.* United States (135 Fed. Rep., 914; T. D. 25896) and Spero *v.* United States (135 Fed. Rep., 915; T. D. 25897). In Brodie *v.* United States (*supra*) Judge Platt, writing the opinion, said:

I am clearly of the opinion that the condition, and not the use of the feathers, governs its classification under said paragraph 425, and that the inclusion of "ornamental feathers" at the rate of 50 per cent in the latter part of said paragraph, as well as its association therein with other enumerated articles, all of which are self evidently

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wholly or partly manufactured, indicates that only such "ornamental feathers" as have been "dressed, colored, or otherwise advanced or manufactured in any manner" are properly dutiable at said rate of 50 per cent ad valorem. *Crude feathers of all kinds are dutiable at 15 per cent ad valorem.*

This in effect overruled Silva *v.* United States (*supra*).

There can be no justification for singling out crude peacock feathers from all other kinds of crude feathers and assessing the higher rate of duty thereon, especially in view of the court's determination in the Brodie case that *crude feathers of all kinds are dutiable at 15 per cent ad valorem.* We therefore sustain the claim for duty at 15 per cent ad valorem and reverse the decision of the collector accordingly.

(T. D. 27822—G. A. 6514.)

Gallilith in sheets.

Gallilith in sheets, while in the crudest form imported, is dutiable at the rate of 20 per cent ad valorem under the provisions of section 6, tariff act of 1897.—Abstract 11589 (T. D. 27393) and Abstract 11998 (T. D. 27458), affirmed by United States circuit court, southern district of New York (T. D. 27773), followed.

United States General Appraisers, New York, January 12, 1907.

In the matter of protests 200557, etc., of Switzer & Schussel *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* These protests relate to merchandise invoiced as "unmanufactured gallilith." Duty was assessed thereon at the rate of 20 per cent ad valorem under section 6 of the tariff act of 1897. Protestants claim that duty should have been assessed at the rate of 10 per cent ad valorem under said section 6.

Merchandise similar to that here involved was the subject of Abstract 11589 (T. D. 27393), and Abstract 11998 (T. D. 27458), wherein it was held that, while gallilith in blocks and sheets was the crudest form of gallilith imported, it was properly dutiable at the rate of 20 per cent ad valorem under the provisions of section 6.

Appeals from decisions of the Board (Abstract 11589 and Abstract 11998), *supra*, to the United States circuit court, southern district of New York, were taken by the importers (suits 4270 and 4357; Switzer & Schussel *v.* United States and E. Oppenheim *v.* United States), and have been determined adversely to the contention of protestants (T. D. 27773). See G. A. 6159 (T. D. 26733).

It follows, therefore, that the assessment of duty at the rate of 20 per cent ad valorem under section 6 must be affirmed and the protests overruled.

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(T. D. 27823—G. A. 6515.)

Mother-of-pearl slabs.

Pieces of mother-of-pearl formed by cutting or grinding into slabs designed for use in the manufacture of handles for knives, etc., are dutiable at 35 per cent ad valorem, as manufactures of mother-of-pearl, under paragraph 450, tariff act of 1897, and are not entitled to free entry as mother-of-pearl uncut, under paragraph 635, nor are they dutiable at 10 or 20 per cent ad valorem under section 6 of said act, as articles either unmanufactured or manufactured.—G. A. 1473 (T. D. 12922) and G. A. 6176 (T. D. 26799), affirmed by the circuit court for the southern district of New York (T. D. 27767), cited.

United States General Appraisers, New York, January 14, 1907.

In the matter of protests 218352, etc., of Adolph Kastor & Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* These protests are lodged against the assessment of duty at 35 per cent ad valorem under paragraph 450 of the present tariff act, on mother-of-pearl slabs cut or ground in various sizes and designed for use in the manufacture of handles for knives, button hooks, and similar articles.

The protestants claim free entry for the merchandise under paragraph 635, or, alternatively, classification as unenumerated articles, either unmanufactured or manufactured, with duty, respectively, at 10 or 20 per cent ad valorem under the provisions of section 6.

The question raised in this case is identical with that passed upon by this Board in G. A. 1473 (T. D. 12922), which decision on appeal was affirmed by the United States circuit court for the district of Massachusetts, *In re* Russell Cutlery Company (56 Fed. Rep., 221), on the authority of which decision and affirmance the Board in G. A. 6176 (T. D. 26799) held similar merchandise to be manufactures of mother-of-pearl, dutiable at the rate provided in paragraph 450. G. A. 6176 (*supra*) having been recently affirmed by the circuit court for the southern district of New York (see T. D. 27767), we overrule the protests now before us and affirm the collector's decision in each case.

(T. D. 27824.)

Abstracts of decisions of the Board of General Appraisers.

No. 14021.—TOYS—FEATHERS WITH WEIGHT AND BURR ATTACHED.—Protest 212044 of American Import Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 9, 1907.

The articles in dispute were classified as manufactured feathers under paragraph 425, tariff act of 1897, and were claimed to be dutiable as toys under paragraph 418 Protest sustained.

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McCLELLAND, *General Appraiser:* * * * The grounds of objection to the collector's classification as stated in the protest are that the merchandise is "wing feathers of the domestic fowl, having the quill end lead-weighted, with vegetable burr attached, intended to cause the feathers to adhere to the object at which thrown." * * * While it is evident on an examination of the official sample that the component material of chief value of the merchandise is feathers advanced in value from the crude state, we are nevertheless satisfied that in the condition imported the articles involved could only be used as toys, and we think the claim of the protesting company is well founded.

No. 14022.—FEATHERS—FLYING BIRDS.—Protests 188128, etc., of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 9, 1907.

The importers objected to the classification of the merchandise as ornamental feathers under paragraph 425, tariff act of 1897. Protest overruled.

McCLELLAND, *General Appraiser:* * * * An examination of said samples shows that the merchandise is made up into articles which crudely represent the form of a flying bird and are composed of feathers and cotton, feathers being manifestly the component material of chief value. It is also apparent that the feathers so used have been advanced in condition far beyond the crude state.

There is no provision in the tariff act for manufactures of feathers or of which feathers are the component material of chief value; but in section 7 of said act it is provided that on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material of chief value. Manufactured feathers, therefore, being the component material of chief value of the merchandise involved, it follows that duty was properly assessed at 50 per cent ad valorem under the provisions of paragraph 425.

No. 14023.—BALATA BELTING.—Protest 213978 and protest 218368 of New York Leather Belting Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 9, 1907. Opinions by McClelland, G. A.

The merchandise, which was invoiced as balata belting, was classified under paragraph 450, tariff act of 1897, relating to manufactures in chief value of gutta-percha. In protest 213978 the appraiser returned the belting as composed in chief value of balata, and it was classified as manufactures of gutta-percha by similitude. In protest 218368 the merchandise was returned and classified as composed in chief value of gutta percha. Assessment affirmed. Note G. A. 6164 (T. D. 26751).

No. 14024.—PROTEST UNSUPPORTED.—Protest 212045 of Robert Dollar Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 9, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14025.—SILK FABRICS.—Protest 221158 of Theo. Tiedemann & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 9, 1907. Opinion by Howell, G. A.

Protest sustained on the authority of Abstract 13847 (T. D. 27801), relating to silk fabrics.

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No. 14026.—MANUFACTURES OF COTTON.—Protest 219341 of William Weidenkeller against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 9, 1907. Opinion by De Vries, G. A.

Goods classified as composed in chief value of flax were held dutiable as manufactures of cotton under paragraph 322, tariff act of 1897, as claimed by the importer.

No. 14027.—EMBROIDERED ARTICLES.—Protests 207390, etc., Knauth, Nachod & Kühne against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 9, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly classified under paragraph 339, tariff act of 1897, relating to flax embroideries.

No. 14028.—FIGURED COTTON CLOTH.—Protest 111449 of M. Bloch against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). January 9, 1907. Opinion by De Vries, G. A.

G. A. 6484 (T. D. 27728) followed, relating to figured cotton cloth.

No. 14029.—COTTON CLOTH.—Protests 1658*h*, etc., of R. B. McLea Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 9, 1907. Opinion by De Vries, G. A.

Protests sustained as to a portion of the goods, which were found to have been improperly subjected to the additional duty provided in paragraph 318, tariff act of 1897, for figured cotton cloth.

No. 14030.—PHILIPPINE PRODUCTS.—Protests 219146, etc., of Isler & Guye against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 9, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 5226 (T. D. 24051), relating to Philippine products.

No. 14031.—PROTEST ABANDONED.—Protest 217791 of Sundheimer Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 9, 1907. Opinion by Fischer, G. A.

Protest abandoned; overruled.

No. 14032.—BROKEN RICE.—Protest 161961 of Seattle Brewing and Malting Company against the assessment of duty by the collector of customs at the port of Port Townsend. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), December 28, 1906. Opinion by Waite, G. A.

The importers contended that the merchandise should have been classified as broken rice under paragraph 232, tariff act of 1897. Protest overruled.

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No. 14033.—LEAF TOBACCO.—Protest 224367 of B. Castellano & Co., protest 221156 of Benito Rovira Company, protest 221157 of Benito Rovira Company, protest 222277 of Selgas, Suarez & Co., protest 224576 of Carl Vogt's Sons, and protest 220218 of Chas. Wasserman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 10, 1907. Opinions by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the various bales to contain the following percentages of filler tobacco and modified the collector's classification accordingly: Protest 224367: Bales 574, 570, 601 and 569, 100 per cent; and bale 602, 90 per cent. Protest 221156: Bale 2662, 93 per cent; bale 2663, 92 per cent; bale 2655, 85 per cent; and bale 2656, no filler. Protest 221157: Bale 2869, 100 per cent; bale 2868, 91 per cent; bales 2922, 2861, 2862, and 2871, 90 per cent; bales 2872, 2870, 2860, 2857, 2859, 2851, 2852, and 2850, 88 per cent; bale 2863, 86 per cent; and bales 2858, 2856, 2849, and 2848, no filler. Protest 222277: Bales 366, 368, and 369, 100 per cent, and bale 373, 94 per cent. Protest 224576: Bale 5168, 100 per cent. Protest 220218: Bale 2, 95 per cent; bales 3 and 4, 90 per cent.

No. 14034.—HAT BODIES.—Protest 220672 of Kaufmann, Aron & Warshauer against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 10, 1907. Opinion by Lunt, G. A.

The Board held the goods to have been properly classified as hat bodies in chief value of rabbits' fur, under paragraph 432, tariff act of 1897.

No. 14035.—HAT BODIES.—Protests 177632, etc., of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 10, 1907. Opinion by Lunt, G. A.

The Board sustained the importers' contention that the merchandise should have been classified as hat bodies composed of rabbits' fur, under paragraph 432, tariff act of 1897.

No. 14036.—JACQUARD SILKS.—Protests 29394*f*, etc., of Adolph Wimpfheimer & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 10, 1907. Opinion by Howell, G. A.

A portion of the goods was held dutiable under the provision in paragraph 391, tariff act of 1897, for Jacquard silks, as claimed by the importers.

No. 14037.—SWIVEL-FIGURED SILKS.—Protests 42215*f*, etc., of S. Peierls & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 10, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6508 (T. D. 27796), relating to swivel-figured silks.

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No. 14038.—FEATHERSTITCH BRAIDS.—Protests 207782–21958, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 10, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14039.—PROTESTS ABANDONED. — Protest 208090 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 10, 1907. Opinion by Lunt, G. A.

Protest abandoned; overruled.

No. 14040.—PROTESTS ABANDONED.—Protests 203088, etc., of A. Klipstein & Co. *et al.* Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent).

Same as No. 14039 (*supra*).

No. 14041.—PROTEST ABANDONED.—Protest 216314 of L. N. Levy against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14039 (*supra*).

No. 14042.—PROTESTS ABANDONED.—Protest 221171 of G. F. A. Bondies. January 10, 1907. Opinion by De Vries, G. A.

Same as No. 14031 (*supra*).

No. 14043.—PROTESTS ABANDONED.—Protests 125150, etc., of John Menke *et al.* January 10, 1907. Opinion by Howell, G. A.

Same as No. 14031 (*supra*).

No. 14044.—PROTESTS UNSUPPORTED.—Protest 214843 of F. B. Vandegrift & Co., protest 226802 of Carl Vogt's Sons, and protest 223886 of W. A. Rumpf against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 10, 1907. Opinions by Lunt, G. A.

Protests overruled for want of merit.

No. 14045.—PROTESTS UNSUPPORTED.—Protest 120019 of J. Zimmermann's Sons, protest 41973*f* of S. Peierls & Co., and protests 129778, etc., of John Menke & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 10, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 14046.—PROTESTS UNSUPPORTED.—Protests 203081, etc., of Freund, Foise & Co. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by De Vries, G. A.

Same as No. 14045 (*supra*).

No. 14047.—PROTESTS UNSUPPORTED.—Protests 219556, etc., of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 10, 1907. Opinion by Somerville, G. A.

Protests overruled for want of merit.

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No. 14048.—ORNAMENTS—PINS—BEADS—IMITATION PEARLS.—Protests 38711*f*, etc., of A. Steinhardt & Bro. *et al.* and protest 44914*f* of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 11, 1907. Opinions by Sharretts, G. A.

The protests related to beads, imitation pearls, millinery ornaments, etc., which the importers claimed to be dutiable as manufactures of the component material of chief value, or, as in the case of imitation pearls, as imitation precious stones under paragraph 435, tariff act of 1897. The Board rendered decisions in harmony with the following authorities: Abstract 5635 (T. D. 26248), G. A. 6088 (T. D. 26554), G. A. 6130 (T. D. 26653), G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), and Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316).

No. 14049.—ORNAMENTS—JEWELRY—MANUFACTURES OF METAL.—Protests 42641*b*, etc., of J. G. Darlington & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 11, 1907. Opinion by Sharretts, G. A.

The protests related to goods classified as jewelry and claimed dutiable as manufactures of the component material of chief value. This contention was sustained as to a portion of the merchandise. G. A. 6130 (T. D. 26653), G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), and Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316) followed.

No. 14050.—JEWEL BOXES.—Protest 219597-22967 of A. C. McClurg & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 11, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Abstract 3613 (T. D. 25749), relating to jewel boxes.

No. 14051.—POST-CARD ALBUMS.—Protests 218262, etc., of Heinrich Schmidt *et al.* against the assessment of duty by the collector of customs at the port of New York Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 11, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6500 (T. D. 27782), relating to post-card albums.

No. 14052.—POST-CARD ALBUMS.—Protests 187647, etc., of Moses Norris *et al.* against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14051 (*supra*).

No. 14053.—POST-CARD ALBUMS.—Protests 188604, etc., of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14051 (*supra*).

No. 14054.—POST-CARD ALBUMS.—Protest 199054 of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans.

Same as No. 14051 (*supra*).

No. 14055.—POST-CARD ALBUMS.—Protest 219205 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of Newport News.

Same as No. 14051 (*supra*).

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No. 14056.—Post-Card Albums.—Protests 214382, etc., of B. Illfelder & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14051 (*supra*).

No. 14057.—Flax Fabrics.—Protests 215230–22515, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 11, 1907. Opinion by De Vries, G. A.

The protests related to checked glass cloth, a portion of which was held dutiable under the provision in paragraph 346, tariff act of 1897, for flax fabrics weighing less than 4½ ounces per square yard, as claimed by the importers.

No. 14058.—Figured Cotton Cloth.—Protests 228003, etc., of Max Scheuer & Bro. *et al.* January 11, 1907.

Same as No. 14028 (*supra*).

No. 14059.—Manufactures of Cotton—Manufactures of Flax.—Protests 220578, etc., of Neuss, Hesslein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 11, 1907. Opinion by De Vries, G. A.

As claimed by the importers, a portion of the goods was held dutiable as manufactures of cotton under paragraph 322, tariff act of 1897, and another portion as flax fabrics weighing less than 4½ ounces per square yard under paragraph 346.

No. 14060.—Shortage.—Protest 211783 of R. Lesch against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 11, 1907. Opinion by Somerville, G. A.

The Board sustained the importer's contention that there was a shortage of 35 out of a shipment of 50 photographs.

No. 14061.—Wood Pulp—Countervailing Duty.—Protests 54352 *b*, etc., of Chemical Paper Company *et al.* against the assessment of duty by the collector of customs at the port of Burlington. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 11, 1907. Opinion by Somerville, G. A.

G. A. 6445 (T. D. 27629) followed, relating to the assessment of countervailing duty on wood pulp.

No. 14062.—Masks.—Protest 218418 of B. Wilmsen against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 11, 1907. Opinion by Hay, G. A.

The goods were classified as masks under paragraph 451, tariff act of 1897, and were claimed dutiable either under paragraph 400 as lithographic prints, or under paragraph 403 as printed matter. Assessment affirmed.

No. 14063.—Church Regalia—Canopy.—Protest 208801–22293 of Wakem & McLaughlin against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 11, 1907.

The protest related to a canopy, which was claimed to be free of duty as regalia under paragraph 649, tariff act of 1897, wherein "regalia" is defined as embracing

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"only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution" importing it. Protest sustained.

HAY, *General Appraiser:* * * * The appraiser reports that "said canopy when examined was found to be so formed as to present three embroidered sides of a square. The construction of the article showed that it was to be placed over a chair against the wall, and was not to be carried in the hand or worn on the person." At the hearing the witness for the importer testified that the canopy, which is about 4½ by 8 feet in size, made up of four sides and the top held up by four poles, is carried and held over the officiating priest in a solemn procession. This would seem to bring the article within the liberal construction that has been placed upon paragraph 649 (G. A. 6265—T. D. 27018).

No. 14064.—PROTEST UNSUPPORTED.—Protest 220418 of Taylor Brothers Company against the assessment of duty by the collector of customs at the port of Rochester. January 11, 1907. Opinion by Sharretts, G. A.

Same as No. 14044 (*supra*).

No. 14065.—PROTESTS UNSUPPORTED.—Protest 219419 of Fischer & Co., protest 208103 of Freund, Foise & Co., and protest 219422 of Freund, Foise & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 11, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 14066.—PROTEST UNSUPPORTED.—Protest 214525 of Favor, Ruhl & Co. against the assessment of duty by the collector of customs at the port of New York. January 11, 1907. Opinion by Hay, G. A.

Same as No. 14047 (*supra*).

No. 14067.—OLIVE OIL.—Protest 204096 of G. P. Calogera against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 14, 1907. Opinion by McClelland, G. A.

The merchandise was held free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for manufacturing or mechanical purposes.

No. 14068.—SILK FABRICS.—Protest 165275 of R. Vogelsang against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), January 14, 1907. Opinion by Howell, G. A.

The goods were held dutiable as silk fabrics under paragraph 387, tariff act of 1897, at the rate of 50 per cent ad valorem, as claimed by the importer.

No. 14069.—FIGURED COTTON CLOTH.—Protests 227519, etc., of E. Ries & Co. *et al.* January 14, 1907.

Same as No. 14028 (*supra*).

No. 14070.—SAMPLES OF NO VALUE.—Protest 191385 of Strauss-Samish Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907.

The importers contended that the articles in dispute should have been held free of duty on the ground that they were samples of no commercial value. Protest sustained.

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SOMERVILLE, *General Appraiser:* * * * The goods in question appear to have been returned by the appraiser as "cut samples" and reported as of no commercial value. It is not quite clear from the record before us whether any duty was assessed on the samples in question, but such would seem to be the case according to the protest filed by the importers. The protest is submitted on the record without the introduction of any testimony. The sample with the record, which is marked "importers' sample," represents a piece of straw braid cut to a length of about 4 inches. In our judgment such merchandise having been found by the appraiser to have no commercial value, and being susceptible of use only as samples, they are entitled to free entry. An ad valorem rate of duty can not of course be assessed on goods having no value.

No. 14071.—COTTON WASTE.—Protest 216421 of G. B. Smitheman against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 6390 (T. D. 27453), relating to cotton waste.

No. 14072.—LINEN-THREAD WASTE.—Protest 212920 of Gatti-McQuade Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907. Opinion by Somerville, G. A.

Linen-thread waste was held free of duty under paragraph 632, tariff act of 1897, as waste fit only for conversion into paper.

No. 14073.—SHORTAGE.—Protest 206915 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907. Opinion by Somerville, G. A.

The Board sustained the claim for shortage, relating to two cases shown never to have been imported.

No. 14074.—PROTEST ABANDONED.—Protest 220458 of Bassett, McNab & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907.

Protests abandoned; overruled.

No. 14075.—PROTESTS UNSUPPORTED.—Protest 216317 of W. A. Ross & Bro. and protest 215621 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 14, 1907. Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 14076.—PROTEST UNSUPPORTED.—Protest 215227-22336 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14075 (*supra*).

No. 14077.—PROTEST UNSUPPORTED.—Protest 213556 of Hoffman & Greenlee against the assessment of duty by the collector of customs at the port of Los Angeles.

Same as No. 14075 (*supra*).

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No. 14078.—PROTEST UNSUPPORTED.—Protest 215198 of George Wm. Rueff against the assessment of duty by the collector of customs at the port of New Orleans.

Same as No. 14075 (*supra*).

TREASURY DEPARTMENT, *January 16, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 27825.)

Sheep dip.

SHALLUS *v.* STONE.

U. S. Circuit Court, District of Maryland. December 17, 1906. No. 205 (suit 1848).

SHEEP DIP—THYMOCRESOL.

Thymocresol, though used as a sheep dip, is not free of duty under paragraph 657, tariff act of 1897, relating to "sheep dip, not including compounds or preparations that can be used for other purposes," because it is also used as a disinfectant and otherwise.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see Abstract 11579 (T. D. 27393), which overruled the protests of Frank H. Shallus, filed in behalf of Jasper M. Lawford, against the assessment of duty by William F. Stone, the collector of customs at the port of Baltimore. The Board's opinion reads as follows:

LUNT, *General Appraiser:* We find that F. H. Shallus imported into the port of Baltimore certain thymocresol upon which duty was assessed on that covered by protest 160559 at 20 per cent ad valorem under section 6, and that covered by protest 169746 at 20 per cent ad valorem under paragraph 15 of the tariff act of 1897, and which is claimed to be free of duty as sheep dip under paragraph 657 of said act.

The substances composing this article consist essentially of coal-tar oils containing hydrocarbons, cresols, and pyridins, together with a small amount of moisture, which when combined produce a substance suitable for use as sheep dip and as a disinfectant compound, and, as it appears from the evidence, was actually used as a disinfectant in Baltimore and was also administered to cattle for the Texas fever, and from the report of the United States chemist at the port of New York may be used for other purposes than sheep dip. We therefore hold the same to be a coal-tar preparation dutiable at 20 per cent ad valorem under paragraph 15 of said act.

The protests are overruled.

Stewart Brown and *George Stewart Brown*, for the importers.

John C. Rose, United States attorney, for the United States.

MORRIS, *District Judge:* This appeal is from the assessment by the collector at Baltimore of 20 per cent ad valorem on 10 casks of a thick fluid known as thymocresol, a compound of coal tar, largely used as a sheep wash in Ohio and Texas and other sheep-raising places, and which the collector classified as a preparation of coal tar. The importer duly protested, claiming that the merchandise was entitled to come in free under paragraph 657 of the act of July 24, 1897, which exempts from duty "sheep dip, not including compounds or preparations that can be used for other purposes."

This qualification of the term "sheep dip" has required at the hands of those administering the law a very careful scrutiny, and frequent decisions with regard to the importations invoiced as "sheep dip" or "sheep wash."

The purpose of a sheep wash is to destroy the parasites, vermin, and cure the sores which affect the skin of sheep; and very many preparations which can be beneficially used for that purpose can also be beneficially used as a germicide or

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insecticide, or a disinfectant where such an article is needed as in toilet closets, drains, stables, etc. Thymocresol is such an article. It has been heretofore under consideration by the General Appraisers; and in April 1898, G. A. 4124 (T. D. 19228), the Board of General Appraisers, in a carefully prepared opinion by General Appraiser Tichenor, found that a compound, similar to the one now in question was a preparation of cresol, dead oil of coal tar, and other ingredients, mixed with water, and while it was principally used as a sheep wash, it was also extensively used as a disinfectant, deodorizer, and antiseptic, and ruled that it was a compound used for other purposes besides sheep wash and was not, therefore, entitled to exemption from duty.

It appears from a letter dated June 10, 1898 (T. D. 19467), from Assistant Secretary Howell, of the Treasury Department, that, in accordance with the above-mentioned decision of the Board of General Appraisers (G. A. 4124), all the coal-tar sheep dips consisting of distilled oils of coal tar saponified with some caustic alkali with an addition of fatty matter, were not sheep dips that could not be used for other purposes and were not free from duty, and that no sheep dips were classified as free from duty except those composed of sulphide of arsenic or orpiment which were used on sheep exclusively. In June, 1901, the same question was before the Board of General Appraisers, G. A. 4949 (T. D. 23189), on the protest of M. Feigel & Bro., with regard to sheep dip composed of a compound of a soluble creosote oil in combination with an alkali, chiefly used as a sheep wash but usable also in other ways when a germicide or disinfectant or antiseptic was required.

It is true that a great many compounds which are used as a sheep wash are debarred from free entry by the fact that they are also fit for use for other purposes and are actually so used, but it is not a fact as is urged by the counsel for the importer that the rule as established and applied by the General Appraiser prevents every sheep dip from free entry. In the protests of William Parr & Son, decided September 24, 1901, G. A. 4996 (T. D. 23285), a yellow ointment containing sulphur, arsenic oxide, and sodium chloride, invoiced as "Hayward's paste sheep dip," was held to be an article compounded especially for use as a sheep dip and unfit for any other use.

I can see no sufficient reason why the ruling of the General Appraisers, which has prevailed for quite a number of years and was upheld by District Judge Adams in the case of Wyman *v.* United States (118 Fed. Rep., 202) should be disturbed, and judgment will be entered accordingly.

(T. D. 27826.)

Cycas palm leaves.

KRESHOWER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 8, 1907. Suit 4088.

1. ORNAMENTAL LEAVES—CYCAS PALM LEAVES PREPARED—WREATHS.

   Cycas palm leaves, which have been subjected to processes that restore their natural appearance and prevent decomposition, are within the provision in paragraph 425, tariff act of 1897, for artificial or ornamental leaves; and they are not removed from this provision by being arranged in wreaths on wire frames.

2. "MANUFACTURE"—PRESERVATION OF PALM LEAVES—WREATHS.

   The preservative treatment of palm leaves and their arrangement in wreaths on wire frames do not result in such a change in their character or use as to remove them from the provision for "leaves" in paragraph 425, tariff act 1897, to that for "manufacture" of palm leaf in paragraph 449.

ON application for review of a decision of the Board of United States General Appraisers.

In the decision below, which is reported as Abstract 7780 (T. D. 26655), the Board of General Appraisers, on the authority of *In re* American Shipping Company, G. A. 5800 (T. D. 25630), affirmed the assessment of duty by the collector of customs at the port of New York on goods imported by L. J. Kreshower.

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Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importer.

J. Osgood Nichols, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The articles in question, consisting of cycas palm leaves and of wreaths made of such leaves, were assessed for duty at 50 per cent ad valorem under paragraph 425 of the present tariff act, which includes artificial or ornamental leaves, flowers, and stems of whatever material composed, not specially provided for. The protest states that the leaves and wreaths are dutiable at 30 per cent ad valorem under paragraph 449, which includes manufactures of palm leaf or of which the same is the component material of chief value, or, in the alternative, at 20 per cent ad valorem under section 6, as nonenumerated manufactured articles. The importers contend that the leaves and wreaths, having passed beyond the condition of mere leaves, are not properly dutiable as artificial or ornamental leaves. The proofs show that the natural leaves are first dried, then boiled in a solution of glycerin, and after again being dried are varnished, the purpose being to restore their natural appearance and prevent decomposition. The single question is whether the articles are more specifically described in the paragraph under which the importers claim they are dutiable, or whether the classification of the collector was correct. It seems to me that, as the object of the treatment of the leaves was to prevent decomposition and to retain or restore their original appearance, they are more appropriately included in the category of artificial or ornamental leaves and can not be classed as an article of manufacture. The wreaths of leaves, it is true, were made in part of metal—that is, the leaves were suitably attached to a circular thin wire frame. The collection of leaves in a wreath was not a transformation or alteration of them; and the wire attachment certainly was not a component part of the wreath, but seems to have been merely an incidental part thereof. No new branches or parts were added. The treatment did not result in a change of the leaves from their former appearance. There was no advance in manufacture in the sense that the process of preservation destroyed the original articles or made them useful for other purposes or altered their trade designation. Hartranft *v.* Wiegmann (121 U. S., 609).

In the cases of *In re* Sheldon, G. A. 4247 (T. D. 19982), and G. A. 4560 (T. D. 21625), which counsel for the importer points out were followed by the circuit court in the cases of G. W. Sheldon & Co. *v.* United States, No. 3364 (T. D. 26101) and No. 3281 (T. D. 26462), single palm leaves that had been chemically treated were held to be dutiable under paragraph 449 as manufactures of palm leaf, but the question as to whether such articles were dutiable under paragraph 425 was not presented or considered in those cases. The principle of De Jonge *v.* Magone (159 U. S., 562) is not inapplicable, and therefore the decision of the Board of General Appraisers is affirmed.

(T. D. 27827.)

Paper.

SEYD *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 8, 1907. Suit 4211.

MARBLEIZED PAPER—SURFACE-COATED PAPER—HANDMADE PAPER.

A handmade paper used for fly leaves or linings of books that has been marbleized by being dipped in a coating solution, *Held* dutiable as surface-coated paper under paragraph 398, tariff act of 1897, rather than as handmade paper under paragraph 401, it not being *ejusdem generis* with the other papers enumerated in the latter paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

In the decision below, reported as Abstract 10084 (T. D. 27114), the Board affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by William Seyd under the tariff act of 1897.

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Comstock & Washburn (*Albert H. Washburn* of counsel), for the importer.

J. Osgood Nichols, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The new evidence introduced in this court proves that the article in question, consisting of marbleized paper, is used generally for fly leaves or linings of books. The collector assessed duty under paragraph 401, as handmade paper. The importer claims that duty should have been assessed under paragraph 398, which provides for surface-coated papers. The merchandise is manufactured by first preparing a coating substance consisting of a gelatin bath, the desired coloring matter being sprinkled thereon by hand. The sheets of white paper are separately dipped into the solution or bath by hand, the colors being transferred to the paper. In this condition the marbleized paper, according to the proofs, is commercially known as surface-coated paper as distinguished from a class known as handmade paper. The Government gave no evidence to refute the contention of the importers, but insist that the paper was made, and the coloring matter or decoration actually applied, by hand, and that the term "handmade paper" is merely descriptive. Paragraph 401 imposes in general terms a duty upon "writing, letter, note, handmade," and certain other papers specifically mentioned, and the provision is broad enough to include the article in question, but the tariff act specifically provides for surface-coated papers by paragraph 398, thus rendering the former paragraph inapplicable. The case of Miller, Sloane & Wright *v.* United States (128 Fed. Rep., 469; T. D. 25006) is a precedent. It is held there that the handmade papers provided for in paragraph 401 are those which are *ejusdem generis* with the classes in said paragraph mentioned. The importation here under consideration is shown not to belong to that class although admittedly handmade.

The decision of the Board of General Appraisers is reversed.

(T. D. 27828.)

Nickel anodes.

BOKER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 8, 1907. Suit 4238.

1. NICKEL ANODES.

In construing paragraph 185, tariff act of 1897, enumerating nickel, nickel oxide, and nickel alloy, "in pigs, ingots, bars, or sheets," *Held* that nickel is not included unless in one of the forms enumerated, and that anodes in the form of plates are therefore excluded.

2. SAME—"SHEETS."

A sheet of metal is comprehended to be broad, thin, and expanded; and anodes, consisting of nickel plates about 12 inches long, 6¼ inches wide, and less than half an inch thick, which are cut from nickel sheets, are not sheets within the meaning of paragraph 185, tariff act of 1897, relating to nickel in "sheets," etc.

3. SAME—"MANUFACTURE."

Nickel anodes, which are cut from nickel sheets and used in nickel plating and which can be made capable of practical use by the mere drilling of holes in order that they may be suspended in the bath for plating, are manufactured articles and are within the provision in paragraph 193, tariff act of 1897, for manufactures of nickel.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see G. A. 6335 (T. D. 27277), which affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by Hermann Boker & Co.

Kammerlohr & Duffy (*John G. Duffy* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

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HAZEL, *District Judge:* The merchandise in question, invoiced as rolled anodes, consists of plates of pure nickel about 12 inches long, 6¼ inches wide, and seven-sixteenths of an inch thick, which are cut from sheets of nickel and chiefly used for suspension in a bath for nickel plating. They were assessed for duty under paragraph 193 of the present tariff act as a manufacture of nickel. The importers claim the classification should have been at 6 cents per pound under paragraph 185, reading as follows:

Nickel, nickel oxide, alloy of any kind in which nickel is a component material of chief value, in pigs, ingots, bars, or sheets, six cents per pound.

The Board held that the nickel must be shown to be either "pigs, ingots, bars, or sheets," and inasmuch as the facts of this case do not bring the importation within the evident language of paragraph 185, the collector's classification was correct. The importers contend that the words last quoted refer and are restrictive only as to forms of nickel alloys, as evidenced by the fact that nickel oxide, nickel cubes, and nickel in grains can not be included in any of such restricted forms, and therefore the importation in question is clearly included in said paragraph as "nickel." But in this contention I do not agree, as it is proven that the nickel has been advanced by cutting and the plates are made capable of practical use by the mere drilling of holes in their upper ends.

The Board expressed the opinion that the merchandise had a distinctive name, purpose, and use; and accordingly testimony was given in this court in opposition thereto. Such testimony indicates that although the articles are chiefly used as anodes they are not precisely like the commercial anodes which have hooks or ears at their upper ends by which they may be suspended in a bath for plating. The evidence offered by the importers, however, to differentiate the imported article from the anode known to the trade is unimportant, in view of the fact that the plates properly belong to a variety or class desired by some users who prefer to drill holes in a plate or supply their own hanging device; and that given tending to show that the articles are commercially known as nickel sheets and not plates is unsatisfactory and inconclusive. Ordinarily a sheet of metal is comprehended to be broad, thin, and expanded, while the dimensions of a plate are appreciably less.

The decision of the Board of General Appraisers is affirmed.

(T. D. 27829.)

Agate bearings.

UNITED STATES *v.* LORSCH.

U. S. Circuit Court, Southern District of New York. January 8, 1907. No. 3774

AGATE BEARINGS—PRECIOUS STONES.

Pieces of agate, cut and otherwise prepared for use as bearings in scales, are dutiable as precious stones cut but not set, under paragraph 435, tariff act of 1897, and not as manufactures of agate under paragraph 115. The former paragraph is not limited to precious stones intended for purposes of display rather than of industrial utility.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as G. A. 5875 (T. D. 25865), related to importations at the port of New York by Albert Lorsch & Co. The Board sustained the importers' contention on the authority of United States *v.* American Express Company (147 Fed. Rep., 894; T. D. 25808). Note Smith *v.* Computing Scale Company (147 Fed. Rep., 890; T. D. 27263), in which the circuit court for the southern district of Ohio reached the opposite conclusion.

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J. Osgood Nichols, assistant United States attorney, for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

HAZEL, *District Judge:* Small pieces of agate, concededly a precious stone, sawed, cut, and polished, useful for jewelers' and assayers' scales, are here involved. An assessment of duty by the collector at 50 per cent ad valorem under paragraph 115 of the present tariff act, for manufactures of agate, not specially provided for, was not sustained by the Board of General Appraisers, the latter being of the opinion that under the ruling in the case of Hahn *v.* United States (100 Fed. Rep., 685, par. 435), which provides for precious stones cut but not set, was more specific, and accordingly directed an assessment of duty at the rate of 10 per cent ad valorem. The proofs show that the article in question when imported has been suitably cut, polished, and prepared for mounting in the frame of the scales. The scales are of superior quality, and the mounting of the agate bearing in the metal groove is accomplished, according to some of the witnesses, without difficulty, and requires no skill in its adjustment. The lapidary, one Fox, called by the importers, however, swore that the agate bearings are set in the frame similarly to the setting of certain stones in a ring, this being necessary to insure absolute accuracy of the scales. Notwithstanding this apparent conflict of testimony regarding the setting of the bearings, I am satisfied by the record that the agate bearings were cut, polished, and prepared for use and were completed salable articles. That they had regard to industrial utility rather than beauty as manifested in the display of precious stones is not thought important.

The case of United States *v.* Benedict & Warner (145 Fed. Rep., 914; T. D. 27032; C. C. A., second circuit) is thought in point. In that case the article consisted of rock crystal, a precious stone, which was advanced in value by painting. I quote:

> The fact that these unset precious stones have been advanced in value by being cut and ornamented with various designs in an expensive manner brings them specifically within the provisions of paragraph 435, regardless of the subsequent advance in value by painting. They are therefore not dutiable as manufactures of rock crystal not specially provided for under the act.

The decision of the Board of General Appraisers, holding that paragraph 435 for precious stones is more specific than the provision of paragraph 115 is approved.

(T. D. 27830.)

Preserved pineapples.

UNITED STATES *v.* JOHNSON.

U. S. Circuit Court of Appeals, Second Circuit. January 8, 1907. No. 91 (suit 3898).

PINEAPPLES PRESERVED IN OWN JUICE—FRUIT IN SUGAR.

> Pineapples in their own juice, which are preserved in cans and contain 3 per cent of added sugar, but in which the preservative qualities are found in the juice and the hermetical sealing of the cans, rather than in the sugar, which is added in the way of flavoring, are dutiable under the provision in paragraph 263, tariff act of 1897, for "pineapples preserved in their own juice," and not under that in the same paragraph for fruit preserved in sugar.

APPEAL from the circuit court of the United States for the southern district of New York.

The decision below (143 Fed. Rep., 915; T. D. 26941) reversed a decision of the Board of United States General Appraisers, G. A. 5352 (T. D. 24494), which had affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by J. S. Johnson & Co. Note United States *v.* Boden (133 Fed. Rep., 839; T. D. 25945) and Dudley *v.* United States (148 Fed. Rep., 333; T. D. 27516).

The merchandise consisted of pineapples in tin cans. The question at issue is whether it is dutiable under the provision in paragraph 263, tariff act of 1897, for

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"fruits preserved in sugar," as held by the collector and the Board, or under the provision in the same paragraph for "pineapples preserved in their own juice," as held by the circuit court and contended by the importers.

It appears from the opinion of the circuit court that the pineapples as found in the cans contained nearly 14 per cent of sugar, a little over 3 per cent of which consisted of cane sugar extrinsically added in the process of preparation; that this sugar seemed to have been added rather in the way of flavoring than as aiding substantially in the preservation of the fruit; and that the preservation was substantially accomplished by the juice of the fruit, and boiling it and sealing it in the cans. The court expressed the view that "when Congress referred to fruits preserved in sugar it meant fruits in which sugar plays a prominent and important part," and that therefore the fruit in dispute was more properly classed as preserved in its own juice.

D. Frank Lloyd, assistant United States attorney, for the United States.

Walden & Webster (*Howard T. Walden* of counsel), for the importers.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

PER CURIAM: We concur fully in Judge Platt's opinion. Incidentally, reference may be made to our recent decision in Causse Manufacturing Company *v.* United States (T. D. 27751), where we held that certain cherries were not "preserved in their own juice," when the juices which were retained in them only tended to produce their decay. In the case at bar the preservative qualities are found in the juice itself—the boiling of the pineapple in the juice and the hermetically sealing of the contents in the tin cans.

The decision is affirmed.

(T. D. 27831.)

Reimported automobile.

HILLHOUSE *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. January 8, 1907. No. 90 (suit 3751).

1. HOUSEHOLD EFFECTS—AUTOMOBILE.

   Automobiles may properly be classed as "household effects" under paragraph 504, tariff act of 1897.

2. SAME—USE ABROAD ONE YEAR—CONTINUOUS USE.

   Paragraph 504, tariff act of 1897, relating to household effects "used abroad * * * not less than one year," does not require that such use shall be continuous. If it has been for several periods aggregating a year, the conditions of the law are satisfied.

3. SAME—AUTOMOBILE REPAIRED ABROAD—DUTIABILITY OF REPAIRS.

   An automobile used abroad more than one year was subjected to extensive repairs shortly before importation. *Held* that so much of the machine as was a new manufacture (new parts, reupholstering, etc.) was dutiable, but that the rest, including the cost of overhauling, oiling, cleaning, readjusting, and regulating, was free of duty under paragraph 504, tariff act of 1897, as household effects used abroad more than one year.

4. ENTIRETY—CONSTRUCTIVE SEPARATION.

   Held that a single article may for the purposes of assessment under a tariff act be constructively separated into parts subject to different classifications.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 142 Federal Reporter, 303 (T. D. 27008), affirming G. A. 5849 (T. D. 25768), relating to property of J. T. B. Hillhouse.

Walden & Webster (*Howard T. Walden* of counsel), for the importer.

D. Frank Lloyd, assistant United States attorney, for the United States.

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Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, affirming a decision of the Board of General Appraisers, which sustained the collector of the port of New York in assessing duty on an automobile of foreign manufacture under the tariff act of 1897.

LACOMBE, *Circuit Judge:* Duty was assessed under paragraph 193, as an article wholly or in part of iron or steel or other metal, at 45 per cent ad valorem. It is not disputed that, if dutiable at all, it should be under this paragraph. The only claim made here—the importer has abandoned others which were set forth in the protest and discussed by the Board—is that the automobile is entitled to free entry under—

PAR. 504. Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries, all the foregoing if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.

The Supreme Court in Arthur *v.* Morgan (112 U. S., 495) held that carriages were properly classified as household effects, and we see no reason why automobiles should not be similarly disposed of. The Board of General Appraisers disposed of this claim by finding that there was no satisfactory proof that the machine had been used abroad for a year. This defect of proof was supplied in the circuit; and it now appears that after its purchase in October, 1901, it was used abroad for four months, was then brought here (duty being paid on it) and used until August, 1903, and then taken abroad and used more than nine months in Europe. The act does not require continuous use abroad; and it was conceded in the circuit court (and is conceded here) that the automobile was actually used abroad by the owner for more than one year, and was not intended for any other person or for sale. It appears, however, that extensive repairs were made upon it shortly before its second shipment to this country. The judge at circuit found that "the motor had been overhauled, new parts substituted in place of old, and the body had been repaired and newly upholstered." He held:

A new manufacture, in part at least, would seem to have been the result. If the repairing had consisted simply of painting and adjusting parts of the machine which had become impaired and defective by reason of its ordinary use, a more liberal construction of the provision of the tariff act would be justified.

And he affirmed the Board, which had sustained an assessment on the full value of the machine, 10,000 francs.

We concur in part only in this conclusion. As to so much of the machine as was a new manufacture which had not been used abroad for a year, duty was properly exacted; but when the value of such new manufacture is easily determinable there seems no good reason for requiring so much of it as has been used abroad for the requisite time to pay duty also. In the case at bar it appears that the total cost of the overhauling and repairs was 2,989.55 francs, of which 489.55 francs was paid for such work as overhauling, oiling, cleaning, readjusting, and regulating. Upon the balance only, 2,500 francs, should duty as "manufactures of metal," etc., be assessed.

The decision is reversed.

(T. D. 27832.)

Dutiable weight on withdrawal.

UNITED STATES *v.* FALK.

United States Supreme Court. January 7, 1907. No. 259 (suit 3577).

1. DUTIABLE WEIGHT—TOBACCO WITHDRAWN FROM WAREHOUSE.

Under section 33, tariff act of 1897, warehoused merchandise dutiable by weight should be assessed according to its weight at the time of entry and not of withdrawal from warehouse.

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2. SAME—GOODS WITHDRAWN FROM WAREHOUSE.

Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (T. D. 24109), wherein it is provided as to merchandise withdrawn from bonded warehouse that "the same rate of duty shall be imposed thereon as may be imposed by law upon like articles imported at the time of withdrawal," refers to rate of duty rather than to the weight of the merchandise.

3. CONSTRUCTION OF PROVISO.

Section 33, tariff act of 1897, relating to "merchandise previously imported for which no entry has been made" or "previously entered without payment of duty," contains a proviso that the duties on warehoused goods dutiable by weight shall be based upon weight of the goods at the time of entry. *Held* that the proviso is not restricted to the matter immediately preceding it, relating to goods imported prior to the passage of the act, but was intended to be general and includes as well merchandise imported after the passage of the act.

4. CUSTOMS PRACTICE—CONGRESSIONAL RECOGNITION.

In enacting section 33, tariff act of 1897, containing a proviso substantially like the proviso in the corresponding section (50) of the tariff act of 1890, Congress intended the former proviso to have the same general scope as the latter, as construed by the Attorney-General and applied by the administrative officers of the Government up to the time of the enactment of the law of 1897.

5. MOISTURE ABSORBED IN TRANSIT—"IMPURITY."

Moisture absorbed by tobacco on an ocean voyage can not be said to be an impurity within the meaning of the decision of the Supreme Court in Seeberger *v.* Wright & Lawther Company (157 U. S., 183), relating to impurities in flaxseed.

6. SAME—DUTIABILITY.

Moisture absorbed by tobacco on an ocean voyage can not be considered as an independent nontaxable substance, though its amount can be estimated. The statutes contemplate and apply to merchandise which may be changed in weight.

ON writ of certiorari to the United States circuit court of appeals for the second circuit.

James C. McReynolds, assistant United States Attorney-General, for the United States.

Hatch & Clute (*John G. Carlisle* and *Walter F. Welch* of counsel; *Edward S. Hatch* and *J. Stuart Tompkins* on the brief), for the importers.

Mr. Justice MCKENNA delivered the opinion of the court:

This case involves the question whether, upon withdrawal of imports from a bonded warehouse, duties should be collected according to their weight then or upon their greater weight when entered and imported into the country, the loss having been occasioned by evaporation of moisture.

The merchandise in question was leaf tobacco imported into the port of New York, a part before and a part after July 24, 1897. It was entered under bond for warehousing without the payment of duty and withdrawn from warehouse after the present tariff act went into effect, and was assessed by the collector for duty on the basis of weight at the time of its entry. The importers, Falk & Bro., protested and appealed from the decision of the collector to the Board of General Appraisers. The Board, Abstract 1616 (T. D. 25337), affirmed the ruling of the collector on its opinion in *In re* Schmid, G. A. 4214 (T. D. 19715). Falk & Bro. then instituted proceedings for review before the circuit court for the southern district of New York, and that court sustained the decision of the Board of Appraisers (145 Fed. Rep., 574; T. D. 25976). The circuit court of appeals reversed the circuit court (146 Fed. Rep., 484; T. D. 27036).

The contention of the importers is that the merchandise is subject to duty under the provisions of Schedule F of the act of July 24, 1897, based upon weight at the time of withdrawal from bond for consumption, under the provisions of section 50 of the act of October 1, 1890. It is contended that the proviso of the latter act has not been repealed but is in full force and effect, and is applicable to merchandise entered

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in bond subsequent to the passage of the act of July 24, 1897. The Board of Appraisers held that the proviso of section 50 of the act of 1890 was repealed by section 33 of the act of 1897.

Those sections are, respectively, as follows:

SEC. 50. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day: *Provided*, That any imported merchandise deposited in bond in any public or private bonded warehouse having been so deposited prior to the first day of October, eighteen hundred and ninety, may be withdrawn for consumption at any time prior to February first, eighteen hundred and ninety-one, upon the payment of duties at the rates in force prior to the passage of this Act: *Provided further*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its *withdrawal*. (26 Stat., 524.)

SEC. 33. That on and after the day when this Act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to the duties imposed by this Act and to no other duty, upon the entry or the withdrawal thereof: *Provided*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its *entry*. (30 Stat., 213.)

The circuit court held that those sections were not repugnant. The court said:

Neither is general in its application, but is restricted to merchandise previously imported for which no entry has been made.

The court, however, sustained the decision of the Board on the ground that section 2983 of the Revised Statutes was applicable. That section is follows:

In no case shall there be any abatement of the duties or allowance for any injury, damage, deterioration, loss, or leakage sustained by any merchandise while deposited in any public or private bonded warehouse.

The importers denied the application of that section, and contended that under the law, and particularly under section 20 of the customs administrative act of June 10, as amended December 15, 1902 (presently to be stated), they were authorized to withdraw the merchandise from warehouse upon the payment of duties and charges based upon its weight at the time of withdrawal. The court ruled against the contention, and said:

It seems too plain for discussion that the word "loss" [referring to section 2983], coupled as it is in the disjunctive with "leakage," applies precisely to such a case as the one before us. I can not find any sound reason for believing that the Congress did not have section 2983 in mind when it enacted said section 20, as amended. It is obvious that section 20, especially as amended, refers exclusively to rate rather than weight.

The circuit court of appeals differed from the circuit court in the application of section 2983. It held that the loss there provided for related solely to the loss of merchandise subject to duty, and such loss had not occurred. The court further held that the other terms of the section referred to actual reduction in the value or quantity of the merchandise itself. "It is clear," it was said, "that evaporation of moisture is not 'loss' * * * sustained by * * * merchandise." The case of Seeberger v. Wright & Lawther Company (157 U. S., 183) was referred to as analogous. The court also disagreed with the construction of the circuit court of section 20 of the customs administrative act, and held that by virtue of the proviso added to that section December 15, 1902 (stated later), duties should have been assessed according to the weight of the tobacco at the time of its withdrawal.

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This history of the case exhibits the contentions of the parties and the elements of the contentions; and, it will be seen, the case is one of statutory construction.

First, as to Seeberger *v.* Wright & Lawther Company (157 U. S., 183), which is urged as controlling. The importation there was flaxseed. The proof showed that the seed contained dust composed of clay, sand, and gravel to an average of 4 per cent. The case turned upon the meaning of the word "draught" in section 2898 of the Revised Statutes. It was assumed that the word did not apply to impurities, and it was said that the lower court was correct in assuming that the flaxseed in question, which was made dutiable under the act of 1883 at 20 cents per bushel of 56 pounds, less tare, meant 56 pounds of clean seed, or at least seed free from any impurities, such as the clay, sand, and gravel in question.

The moisture which the tobacco in the case at bar absorbed can not be said to be an impurity within the meaning of that decision, even though moisture in tobacco is a variable quantity and its amount can be estimated by weighing the tobacco at different times. Nor can it be considered as an independent, nontaxable substance, even though, as conceded in this case, it was absorbed on the ocean voyage. The statutes contemplate and apply to merchandise which may change in weight, and if the moisture in the tobacco in this case can be regarded as an independent substance—so much "sea water," to use counsel's graphic phrase—a question of the application of section 50 or 33 could not arise. One or other of these sections was considered applicable from the beginning, and the importations regarded as controlled by it, as merchandise subject to duty by weight, and necessarily there was involved the question at what time the weight should be estimated—at the time of entry or at the time of withdrawal from warehouse. To that question, then, we shall address ourselves.

It is said by counsel for the United States that, prior to October 1, 1890, duties were uniformly demanded and collected according to the weight of merchandise at original entry, citing in support of the assertion the Customs Regulations of 1884 and 1899. Upon that date (October 1, 1890) the tariff act of 1890 took effect. Section 50 provided, as we have seen, that goods previously imported, for which no entry had been made, and goods warehoused, for which no permit of delivery had been issued, should be subject to no other duty than if the goods were imported after the day the act took effect. It was also provided that when duties were based upon the weight of warehoused merchandise the duty should "be levied and collected upon the weight of such merchandise at the time of its *withdrawal*" (italics ours). A question arose as to the scope of the proviso, whether it was restricted to the matter immediately preceding—that is, merchandise imported before the act took effect—or was of general application, applying as well to merchandise imported after as before the act took effect. The Attorney-General decided that the latter was its effect. He said (20 Op. Atty. Gen., 81, 82):

> I am aware that under former tariff acts the rule has been to levy duties upon weighable merchandise according to the weight at the date of importation, but this proviso seems to be intended to change that rule, and there seems to be sufficient reason for such change.

The executive officers of the Government followed this construction until the act of July 24, 1897, known as the Dingley act, was passed. The construction made by the Attorney-General is disputed, as applicable to section 33 of the act of 1897; and it is urged that the whole scope and meaning of that section, when reduced to its simplest terms, make goods theretofore entered under bond for warehouse subject to the duties imposed by the act upon the withdrawal thereof, when the section is construed in accordance with the rule that a proviso refers only to the provision of a statute to which it is appended. This may be conceded to be the primary purpose of a proviso, but a presumption of such purpose can not prevail to determine the intention of the legislature against other tests of meaning more demonstrative. We said in United States *v.* Whitridge (197 U. S., at p. 143; T. D. 26126)—

> While no doubt the grammatical and logical scope of a proviso is confined to the subject-matter of the principal clause, we can not forget that in practice no such limit is observed.

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And the Attorney-General's opinion can not be overlooked. The proviso which he construed in section 50 of the act of 1890 was reenacted in section 33 of the act of 1897. It would be extreme to hold that Congress by doing so intended to set up the technical rule relating to provisos against the construction of the Attorney-General and to change that construction by repeating the very words construed. And there could have been no oversight. The practice of the executive officers for years gave emphasis and materiality to the construction. A change was made, however—a change of one word—a change recommended by the Treasury Department to increase the revenues and give greater convenience to the administration of the customs laws. The word "entry" was substituted for the word "withdrawal," and necessarily thereafter duties upon merchandise there provided for were to be based upon weight at the time of *entry*. Nor do we see that there is any contradiction of this in other provisions of the statute. Certain provisions of the customs administrative act are, however, relied upon. The provisions of that act, hereafter quoted, originated in section 1 of the act of March 14, 1866 (14 Stat., 8), and were carried into the Revised Statutes as section 2970, which provided that merchandise deposited in warehouse might be withdrawn for consumption within one year from the date of importation, upon payment of the duties and charges to which it might be subject by law at the time of withdrawal. At the expiration of one year, and until the expiration of three years, it might be withdrawn for consumption on payment of the duties assessed on the original entry and charges, and an additional duty of 10 per cent on the amount of such duties. It was decided in Merritt *v.* Cameron (137 U. S., 542, 550, 551) that that section "was intended to provide for cases in which a change of rate of duty had been made by statute while the merchandise was in bonded warehouse."

Then came section 20 of the customs administrative act of June 10, 1890 (26 Stat., 140, 624), as amended by act of October 1, 1890, providing that warehouse merchandise might be withdrawn for consumption within three years from the date of the original importation on payment of the duties and charges to which it might be subject by law at the time of such withdrawal. The section was amended in 1902 (32 Stat., 753) by the addition of the following proviso:

Provided, That the same rate of duty shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal.

The circuit court of appeals gave controlling force to the proviso as fixing the meaning of the section. The court said that it had held in Mosle *v.* Bidwell (130 Fed. Rep., 334; T. D. 25276) "that the amendment of 1902 was declaratory of the meaning of the statute prior to said amendment, and that its meaning as thus declared was that no greater or different duties could be imposed [on the goods when withdrawn from warehouse] than those to which other like goods imported at the time of withdrawal would be subject." Regarding this decision as conclusive, the court said:

If other like goods had been imported at the time when these goods [the tobacco in question] were withdrawn, duty would have been assessed thereon according to their weight at such time.

But the question in Mosle *v.* Bidwell was not the same as in the case at bar. The question now is not what rate of duty merchandise is subject to, or whether it is exempt from duty, but at what date its weight is to be taken as a basis of duty. And weight is a fact independent of the rate of duty. The proviso of section 20 of the customs administrative act, therefore, can not be made paramount to the proviso in section 33 of the tariff act of 1897. Nor was that the purpose of its enactment. It was enacted to nullify the effect of the decision of the circuit court in Mosle *v.* Bidwell (119 Fed. Rep., 480), by which section 20 was construed to require the payment of duties which had accrued at the time of importation, notwithstanding a change of rate or that the goods had become exempt from duty before their withdrawal from warehouse. This construction was contrary to the general understanding of the section and the practice

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of the Department. This, then, is our view: The Attorney-General having construed the proviso of section 50 of the act of 1890 as not restricted to the matter which immediately preceded it, but as of general application, and this construction having been followed by the executive officers charged with the administration of the law, Congress adopted the construction by the enactment of section 33 of the act of 1897, and intended to make no other change than to require as the basis of duty the weight of the merchandise at the time of entry instead of its weight at the time of its withdrawal from warehouse.

Judgment of the circuit court of appeals is therefore reversed and that of the circuit court is affirmed and the case remanded to the latter court.

Mr. Justice MOODY took no part in the decision of this case.

(T. D. 27833.)

Unusual coverings.

UNITED STATES *v.* PARK.

U. S. Circuit Court of Appeals, Second Circuit. January 8, 1907. No. 83 (suit 4075).

UNUSUAL COVERINGS—ADDITIONAL DUTY—CUMULATIVE DUTIES.

Section 19, customs administrative act of 1890, prescribes that the dutiable value of goods subject to an ad valorem duty shall include the cost of their coverings, and that when the coverings are unusual they shall be assessed with "additional duty * * * at the rate to which the same would be subject if separately imported." *Held* that this does not mean that the "additional duty" is in lieu of the duty which would accrue on unusual coverings by including their cost in the dutiable value of their contents, but that such coverings are liable to the duty in both forms.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 142 Federal Reporter, 202 (T. D. 26973), affirming G. A. 6111 (T. D. 26608), relating to an importation by Park & Tilford. Note *In re* Alessi, G. A. 5405 (T. D. 24622), and *In re* Arnold, G. A. 4926 (T. D. 23056).

J. Osgood Nichols, assistant United States attorney, for the United States.

Edward Hartley (*B. A. Levett* of counsel), for the importers.

Before WALLACE, LACOMBE, and TOWNSEND, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, affirming a decision of the Board of General Appraisers, which reversed the action of the collector of the port of New York in assessing certain imported merchandise under the tariff act of 1897.

LACOMBE, *Circuit Judge:* The articles in question are wooden boxes or cabinets containing cigars. They are more elaborate and ornamental than the ordinary cigar box of commerce, and it is undisputed that they are unusual coverings, designed not only for the transportation of the cigars packed in them but also for the purpose of enhancing their attractiveness when exposed for sale and supplying a pleasing receptacle to contain them. The appraised value of the cabinets was $5 each, and they were invoiced as "sample cases" containing cigars.

The customs officers included the value of the cabinets in determining the actual market value of the cigars, upon which the ad valorem duty of 25 per cent on cigars was assessed and paid. The collector also imposed an additional duty upon the cabinets at 35 per cent ad valorem as "manufactures of wood" under paragraph 208. It is conceded that, if imported empty, the latter rate of duty would be the proper one; but it is contended that the collector was not warranted in imposing a double duty on the cabinets.

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His action was taken under section 19 of the customs administrative act, which reads as follows:

19. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported. That the words "value" or "actual market value" whenever used in this Act or in any law relating to the appraisement of imported merchandise shall be construed to mean the actual market value or wholesale price as defined in this section.

The language of this section is certainly plain and unambiguous. It provides first that whenever imported merchandise is subject to an ad valorem duty, the value upon which that duty is to be assessed shall include the value of all cases, crates, boxes, and coverings of any kind. This is a requirement applicable to all importations of ad valorem goods. There is nothing in this part of the section to indicate that under any contingency a different rule shall be applied in assessing the valuation of any importation of such goods. The section next provides that if there be used for holding the merchandise, whether dutiable or free, any unusual covering, additional duty shall be levied upon such covering at the rate to which the same would be subject if separately imported. If this duty is to be "additional," it would seem to be the plain intent of the act that the article which pays the "additional" duty shall also pay an initial duty. If it were intended that in the event of an unusual covering it should pay duty only at the rate to which it would be subject if imported separately, there would be no need to use the word "additional" at all. It is true that when the imported merchandise is free the duty on the unusual covering is not properly an "additional" one, but the word exactly covers a case like the present, and unless it is to be wholly disregarded should require the levy of two duties on the covering: one on such article as subserving a use in transportation, and the other on such article as subserving an additional use after the transportation.

In the majority opinion, filed by the Board of General Appraisers, it is not disputed that such is the literal construction of the section; but they reach the conclusion that it was not the intent of Congress to exact a double duty. They suggest that the literal construction would produce a condition repugnant to fair dealing in the administration of customs laws; that it has been the policy of Congress so to frame these laws as to render them the least possible burden to the citizen and uniform in their administration, and that such construction is in conflict with the report of the committee of Congress in presenting to the House of Representatives the bill which, upon its enactment by Congress, became this act.

It is no uncommon occurrence, however, to find in tariff acts provisions expressly devised to accomplish some purpose other than the mere collection of duty. Some articles are exposed to such a rate of duty as will practically prohibit their importation; in some cases cumulative duties are provided for (par. 313, act of 1897); duty so high as to be characterized as penal is sometimes exacted to put a stop to some undesirable practice. Thus when imported merchandise was inclosed in coverings designed for use otherwise than in the bona fide transportation of the merchandise, a duty of 100 per cent was imposed by the tariff act of 1883 (sec. 7). It is a fact of which the courts which hear customs causes will take notice that there has been much litigation as to the question of the usualness or bona fides of various "coverings," and that

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Congress has enacted many provisions to prevent the Government from suffering loss of revenue by reason of the adoption of some unusual covering, designed to subserve a double purpose. It certainly would not be surprising to find that Congress had at last decided to accomplish this by prescribing a double duty, and we find nothing repugnant to fair dealing in such an enactment. In the case at bar the cabinets, at 25 per cent plus 35 per cent, pay only a little more than half what they would have paid under the act of 1883.

It appears, moreover, from the references to the Congressional Record set forth in the Government's brief that the report of the House Committee upon which the Board of General Appraisers relied was made at a time when the bill did not contain any provision for "additional" duty. It was amended to its present shape subsequently in the Senate (Cong. Rec., vol. 21, pt. 4, p. 3973); and the insertion of this word "additional" during the progress of the bill through the legislative body fairly indicates an intention to subject coverings like these to a double duty.

The decision of the circuit court is reversed.

(T. D. 27834.)

Whetstone blocks.

JOHNSON *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. November 13, 1906. Suit 4083.

WHETSTONE BLOCKS—CRUDE MINERALS.

So-called whetstone blocks, weighing approximately 80 to 110 pounds, which after being quarried have been subjected to a rough dressing process, and which, in the condition as imported, are used by calico printers for sharpening instruments and grinding the edges of rollers, *Held* free of duty under the provision in paragraph 614, tariff act of 1897, for "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture."

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 7660 (T. D. 26637), related to importations by Charles A. Johnson & Co. at the port of New York. The opinion filed by the Board reads as follows:

HAY, *General Appraiser:* The merchandise covered by these protests was classified by the collector under section 6 of the act of 1897, as nonenumerated manufactured articles, and a duty of 20 per cent ad valorem levied thereon. In their protests the importers cite a number of paragraphs of the tariff law under one or the other of which they claim the merchandise should have been classified. In their testimony and argument of counsel, however, they confine themselves to paragraph 574 for hones and whetstones, and paragraph 614, which provides for minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in the act. As to many of the cases the importers' counsel at the last hearing, in effect if not in direct terms, abandons all claim under paragraph 574, and the testimony, both that heard recently and that heard some months ago, fails, we think, to bring the cases within the rule laid down by the Board in Waddell & Co.'s case, Abstract 752 (T. D. 25134), which case has been affirmed by the United States circuit court, Waddell *v.* United States (135 Fed. Rep., 211; T. D. 25781).

The claim under paragraph 614 we think not well taken. In our judgment this paragraph was not intended to cover articles of this character; besides the evidence shows that the stones in question have been advanced in condition by some process of manufacture. In other words the pieces as imported are not in the exact condition in which they came from the quarry.

The protests are therefore overruled.

The importers' appeal was limited to so much of the importations in controversy as consisted of so-called whetstone blocks, nearly rectangular in shape, and weighing approximately from 80 to 110 pounds, which, after being quarried, have been roughly

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dressed for the purpose of removing the projections, leaving the blocks with an irregular, uneven surface. These articles were shown by the evidence to be used in their imported condition by calico printers for sharpening instruments and grinding the edges of rollers. In the circuit court no additional evidence was taken, and the only contention made by the importers was that the merchandise was free of duty under paragraph 614 of said act, which reads as follows:

Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this Act.

Hatch & Clute (*Walter F. Welch* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* Decision reversed.

NOTE.—The foregoing decision has been acquiesced in (T. D. 27815).

(T. D. 27835.)

Drawback on petroleum barrels.

Drawback on petroleum barrels manufactured by the Atlantic Refining Company, of Philadelphia, Pa., partly with hoops made from imported steel.—T. D. 23905 of July 28, 1902, and T. D. 24022 of October 23, 1902, extended.

TREASURY DEPARTMENT, *January 16, 1907.*

SIR: The Department's regulations of July 28, 1902 (T. D. 23905), and October 23, 1902 (T. D. 24022), providing for the allowance of drawback on petroleum barrels manufactured wholly with hoops made from imported hoop steel by the Standard Oil Company of New York, and Atlantic Refining Company, of Philadelphia, Pa., are hereby extended to cover such barrels manufactured by the Atlantic Refining Company, of Philadelphia, Pa., partly with the use of hoops manufactured from imported steel in accordance with their sworn statement, dated July 27, 1906, which is transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(43345.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 27836.)

Constitution of a committee on business methods, Treasury Department.

[Circular No. 4.]

TREASURY DEPARTMENT, *January 17, 1907.*

To officers of the Treasury Department and others concerned:

1. There is hereby created in this Department a committee to be known as the Committee on Business Methods.

2. It shall be the duty of this committee to report to the Secretary personally, as he may direct, plans for new methods of routine business, or changes in systems of bookkeeping, correspondence, filing,

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and office procedure generally, as well as to undertake specific duties within its field assigned to it by the Secretary. It will be the duty of the committee to know thoroughly the business methods prevailing in the various offices of the Department, to investigate them when necessary, and to recommend on its own initiative advisable changes or modifications in these methods to the Secretary.

3. Until otherwise directed, this committee shall be constituted as follows: 1. The Assistant Secretary having supervision of the financial bureaus and offices of this Department. 2. Robert S. Person, Auditor for the Interior Department. 3. James A. Wetmore, office of the Supervising Architect.

LESLIE M. SHAW, *Secretary.*

(T. D. 27837.)

Black or ripe olives.

Appeal directed from decision of Board of United States General Appraisers, G. A. 6505 (T. D. 27793), involving dutiable classification of black or ripe olives in brine imported in barrels.

TREASURY DEPARTMENT, *January 18, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, G. A. 6505 (T. D. 27793), dated December 27, 1906, wherein it is held that certain black or ripe olives in brine, imported in barrels, are not dutiable as olives "green or prepared" under paragraph 264 of the act of July 24, 1897, but are properly entitled to free entry under the enumeration for "fruits in brine" under paragraph 559 of the same act.

In view of the importance of the issue, you are hereby directed to file an application for review of the said decision of the Board of United States General Appraisers in accordance with section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(43727.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27838.)

Drawback on agricultural implements.

Drawback on hayrakes, hay tedders, harrows, and reapers manufactured by the International Harvester Company in the Osborne works at Auburn, N. Y., with the use of imported steel billets.

TREASURY DEPARTMENT, *January 18, 1907.*

SIR: The Department's regulations of September 23, 1903 (T. D. 24680), providing for the allowance of drawback on the exportation of hayrakes, hay tedders, harrows, and reapers manufactured by D. M. Osborne & Co., in part with the use of imported steel billets,

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are hereby extended to cover cultivators, peg-tooth harrows, mowers, disk harrows, harvesters, and binders, and 8-fork tedders, manufactured by the International Harvester Company in the Osborne works at Auburn, N. Y., with the use of imported steel billets.

In liquidation, the quantity of imported steel billets which may be taken as the basis for the allowance of drawback on the machines covered by said T. D. 24680 and those now provided for shall not exceed the quantities appearing in and forming a part of the manufacturer's sworn statement, dated January 2, 1907, transmitted herewith for filing in your office, except in the case of the 6-fork tedders which are not named in said schedule. When the cross bars and center bars in these 6-fork tedders are manufactured from imported steel billets, the same should be indicated in each drawback entry by the mark "A," and when made of domestic steel by the mark "B." Where imported steel is used the drawback on said tedders will be estimated in accordance with the sworn schedule dated September 1, 1903.

Respectfully, JAMES B. REYNOLDS,
(613.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27839.)

Common carrier.

Discontinuing shipments of unappraised merchandise from New York and appraised merchandise under bonds of the Starin's City, River, and Harbor Transportation Company which were approved May 23, 1884.

TREASURY DEPARTMENT, *January 19, 1907.*

SIR: The Department is in receipt of your letter of the 16th instant, requesting the discontinuance of the privilege of the transportation of unappraised merchandise from New York under the bond of the Starin's City, River, and Harbor Transportation Company, which was approved May 23, 1884, and the discontinuance of the shipment of appraised merchandise under the provisions of sections 3000 and 3001 of the Revised Statutes under the bond of said company, which was approved on the same date, as the line as constituted at the time of the approval of said bonds no longer exists.

You will discontinue the shipment of unappraised and appraised merchandise under the above bonds, and indorse the discontinuance and the date thereof on both of said bonds, and hold the same without cancellation to meet any liability which may have accrued according to their terms.

Respectfully, JAMES B. REYNOLDS,
(18553.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27840.)

Reciprocity between the United States and Spain.

Scope of certain provisions of the reciprocal commercial agreement between the United States and Spain, published in T. D. 27583 of September 1, 1906.

TREASURY DEPARTMENT, *January 21, 1907.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, inclosing copies of communications exchanged between the Spanish Ministry of State and the American legation at Madrid explanatory of the meaning of certain portions of the reciprocal commercial agreement between the United States and Spain, published in T. D. 27583 of September 1, 1906, from which it appears that—

The products and manufactures of the United States will pay at their entrance into Spain at the rates of the second or minimum tariff of the Spanish tariff law, it being understood that every decrease of duty accorded by Spain by law or in the commercial pacts now made, or which in future shall be made with other nations will be immediately applicable to the United States, exception only being made of the special advantages conceded to Portugal.

It is also agreed that the words United States wherever used in the said agreement shall be deemed to include the territories and possessions of the United States to which the general tariff laws governing imports into the States admitted into the Union are applied.

Respectfully, LESLIE M. SHAW,
(39611.) *Secretary.*
The SECRETARY OF STATE.

(T. D. 27841.)

Damask.

Decision in Dunham *v.* United States (T. D. 27805) acquiesced in.

TREASURY DEPARTMENT, *January 22, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of James H. Dunham & Co. *v.* United States (suit 3993) was recently decided in the United States circuit court of appeals for the second circuit adversely to the Government.

The merchandise involved consisted of cotton damask table covers, napkins, doilies, and similar completed articles. Duty was assessed thereon at the rate of 45 per cent ad valorem under the enumeration for manufactures of cotton, not specially provided for, under paragraph 322. The importers protested, claiming the merchandise to be cotton table damask within the meaning of paragraph 321 of the same act, and dutiable at the rate of 40 per cent ad valorem, which claim was sustained by the United States circuit court of appeals in this case.

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The Attorney-General advises the Department that no further proceedings will be directed in the case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(14446.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27842.)

Common carrier.

Approving bond of Merchants Despatch Transportation Company for the transportation of unappraised merchandise from Buffalo, N. Y.

TREASURY DEPARTMENT, *January 22, 1907.*

SIR: The Department hereby approves the bond of the Merchants Despatch Transportation Company for the transportation of unappraised merchandise from Buffalo, N. Y., under the act of June 10, 1880, and amendments thereto, and transmits herewith one copy of the bond for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Buffalo, N. Y., to any places in the United States which are now or may be hereafter designated by law as places to which unappraised merchandise may be transported, in suitable cars, vessels, or vehicles owned or controlled by said company and running over such lines of railroad and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(18544.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 27843—G. A. 6516.)

Manufactures of india rubber used as sponges.

Articles composed of india rubber and employed as substitutes for bath sponges are dutiable as manufactures of india rubber at the rate of 30 per cent ad valorem under paragraph 449, tariff act of 1897, and not at 20 per cent ad valorem under paragraph 82 of that act.—G. A. 5944 (T. D. 26091), affirmed by United States circuit court (143 Fed. Rep., 691; T. D. 27006), affirmed by circuit court of appeals, second circuit (T. D. 27746), followed.

United States General Appraisers, New York, January 19, 1907.

In the matter of protests 144712, etc., of Alfred H. Smith Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The articles covered by these protests are artificial sponges composed of india rubber. In G. A.

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5944 (T. D. 26091) this Board held that merchandise identical with that now in question was dutiable at 30 per cent ad valorem under paragraph 450 and not, as claimed by the importers, at 20 per cent ad valorem under paragraph 82 of the tariff act of 1897. The circuit court for the southern district of New York (143 Fed. Rep., 691; T. D. 27006) and United States circuit court of appeals, second circuit (T. D. 27746), having successively affirmed the Board, we overrule the protests now before us and in each case affirm the collector's decision, which is in harmony with the decisions cited.

(T. D. 27844—G. A. 6517.)

Entry under repair bond—Customs regulations.

STRICT COMPLIANCE WITH CUSTOMS REGULATIONS.

Strict compliance with article 612 of the Customs Regulations of 1899 is a condition precedent to the enjoyment of the rights and privileges given by section 19, tariff act of 1897.

United States General Appraisers, New York, January 21, 1907.

In the matter of protest 213425 of Camacho, Roldan & Van Sickel against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* Certain engineers' instruments, which were entered under a repair bond and afterwards exported, were assessed for duty; and against this assessment this protest is filed. The case is submitted upon the papers, two affidavits and briefs.

The collector reports that at the time the bond matured the goods were not exported under the supervision of a customs officer, as required by article 612 of the Customs Regulations of 1899. The protestants base their claim on section 19 of the tariff act of 1897, which reads as follows:

SEC. 19. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

By the express terms of this section the Secretary of the Treasury is authorized and directed to prescribe rules and regulations for its administration, and such rules as are prescribed under this authority become a part of and have the force and effect of the law itself. Article 612 of the Customs Regulations of 1899 was promulgated by the Secretary of the Treasury for the administration of this section, and strict compliance with this article is therefore a condition precedent to the enjoyment of the rights and privileges given by section

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19. Allison's case, G. A. 4886 (T. D. 22875); Bausch's case, G. A. 5539 (T. D. 24909); Eimer *v.* United States (146 Fed. Rep., 144; T. D. 27089); Battelli's case, G. A. 6435 (T. D. 27590). The pertinent part of article 612 of the Customs Regulations of 1899 reads as follows:

The lading of such machinery for export must be under the supervision of a customs officer, who shall certify to the identity of the article with that imported, and to its shipment. The bond will be canceled only upon the presentation of a certificate of landing abroad.

We think it clear from the case as submitted to us that this regulation, which is a reasonable one, was not complied with. The protest is therefore overruled.

(T. D. 27845—G. A. 6518.)

Carbolic tooth soap—Toilet soap.

Soap, conceded to be an article for use in the toilet, *Held* dutiable at the rate of 15 cents per pound under paragraph 72, tariff act of 1897, the provision for "all descriptions of toilet soap" in that paragraph being more specific than the general provision in paragraph 70 for "preparations used as applications to the hair, mouth and teeth."—Lung *v.* Wise (176 U. S., 156) cited; Abstract 11618 (T. D. 27393) and Abstract 12612 (T. D. 27572) modified.

United States General Appraisers, New York, January 22, 1907.

In the matter of protest 215449 of Park & Tilford against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest is described on the invoice as "carbolic tooth soap." It was returned by the appraiser as a toilet article, and was assessed for duty by the collector at the rate of 50 per cent ad valorem under the provisions of paragraph 70 of the tariff act of 1897. It is claimed that duty should have been assessed at either 15 cents per pound or at 20 per cent ad valorem under the provisions of paragraph 72 of said act.

The appraiser states in his special report on the protest that the merchandise is intended for use only as an application to the teeth, and this statement is in the main confirmed by the testimony submitted on behalf of protestants.

The paragraph under which said classification was made reads as follows:

70. Preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, pastes, pomades, powders, and other toilet articles, and articles of perfumery, whether in sachets or otherwise, not containing alcohol or in the manufacture of which alcohol is not used, and not specially provided for in this Act, fifty per centum ad valorem.

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The provisions of this paragraph are not specific but most general in character, covering different classes of articles used for the toilet.

The paragraph under which claim is made reads:

72. Castile soap, one and one-fourth cents per pound; fancy, perfumed, and all descriptions of toilet soap, including so-called medicinal or medicated soaps, fifteen cents per pound; all other soaps not specially provided for in this Act, twenty per centum ad valorem.

In this paragraph we have specific provision for all kinds of soaps, and the question involved is not so much one as to whether the article under consideration is for the toilet, for that is practically conceded, but as to whether it is in fact a soap.

The evidence of the official examiner who passed the merchandise is that it has the characteristics of soap. The analysis furnished by the official chemist also shows that the article has the characteristics of soap.

The tariff act of 1890 contained the following paragraphs:

323. Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound.

730. Tapioca, cassava or cassady.

The court construing these two paragraphs held that tapioca flour, although it might be used as a starch, was not dutiable under paragraph 323 (*supra*), but was more specifically provided for in paragraph 730 (*supra*) as tapioca.

Mr. Justice Peckham, writing for the court, said:

Attempting, as is our duty, to give effect to the statute in all its parts, we think the the proper construction of these provisions is that under paragraph 323 a duty is laid upon starch, including all preparations, from whatever substance produced, fit for use as starch; and assuming that tapioca flour is within that general description fit for such use, yet by virtue of paragraph 730 tapioca is placed on the free list, and the substance being tapioca flour, being tapioca in one of these forms, is excepted from the general language of paragraph 323 and is entitled to free entry. It is so excepted because, although assuming it to be fit for use as starch, it is notwithstanding tapioca, and tapioca is in so many words put on the free list. Lung *v.* Wise (176 U. S., 156).

We think it logically follows, therefore, that the provision for toilet soap contained in said paragraph 72 is more specific than the general provision for "preparations used as applications to the hair, mouth and teeth" in paragraph 70.

In Abstract 11618 (T. D. 27393) and Abstract 12612 (T. D. 27572), involving merchandise of a similar character to that here involved, the Board affirmed classifications made under paragraph 70; but since our attention has been directed to the Lung case (*supra*) we are inclined to think that so far as these abstract decisions bear upon the issue, they should be overruled, for we feel constrained to sustain the claim in the protest that the merchandise should be assessed with duty at the rate of 15 cents per pound under the provision in paragraph 72 *for all descriptions of toilet soap.*

The protest is sustained to the extent indicated and the decision of the collector reversed accordingly.

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(T. D. 27846—G. A. 6519.)

Onyx in blocks.

Onyx in the form of blocks, rough or squared, styled Mexican onyx, *Held* to be specifically provided for and dutiable at the rate of $1.50 per cubic foot under the provisions of paragraph 114, tariff act of 1897.

United States General Appraisers, New York, January 22, 1907.

In the matter of protest 213164 of the Blochman Banking Company against the assessment of duty by the collector of customs at the port of San Diego, Cal.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest was assessed for duty at the rate of $1.50 per cubic foot under the provisions in paragraph 114 of the tariff act of 1897 for "onyx in block, rough or squared." The protesting company claims that it should have been admitted to entry with duty only at the rate of 65 cents per cubic foot under another provision in the same paragraph for "marble in block, rough or squared only."

The merchandise is described in the invoice as "148 pieces of onyx," and was so returned by the appraiser. There is no dispute as to the character of the stone. It is Mexican onyx and is generally so styled in the trade, but the contention of the protesting company is that it is so denominated in the trade simply to distinguish it from other marbles similarly distinguished by names to indicate the localities or countries from whence they came.

Counsel for protestants cites in support of his argument a former decision of the Board, G. A. 1907 (T. D. 13669). We have carefully examined this case, but fail to find anything in it which can possibly be controlling here. In the first place, it is not clear that the article involved was Mexican onyx. The issue arose under the tariff act of 1890, and appears to have been whether certain blocks of marble, so described on the invoices and so returned and so classified, were subject to duty at 65 cents per cubic foot or entitled to free entry as crude mineral; but even if we assume that it was in fact Mexican onyx, the conclusion reached that it was properly subject to the rate of duty provided in said act of 1890 for marble in blocks can not be of influence here because of the change made by Congress in the tariff provisions for marble.

In the tariff acts of 1890 and 1894 there was no special provision for onyx, and unquestionably onyx, being a species of marble, was subject, during the existence of these two tariff acts, to the marble rate of duty; but, in framing the tariff act of 1897, under which this issue arises, Congress deliberately separated onyx from other classes of marble by making special provision therefor and establishing special rates of duty thereon. As already set forth, the rate

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of duty on marble in block, rough or squared only, is 65 cents per cubic foot, and for onyx in block, rough or squared only, $1.50 per cubic foot, and for *marble or onyx*, sawed or dressed, over 2 inches in thickness, $1.10 per cubic foot. Again, in paragraph 115 Congress has distinguished between manufactures of marble and manufactures of onyx, although the same rate of duty is provided for both.

Mexican onyx was well known in trade long before the passage of the act of 1897, and we think there is no escape from the conclusion that it was the deliberate purpose of Congress in framing paragraphs 114 and 115 to separate onyx from other species of marble and fix definite rates of duty thereon. If it had been the intention to continue the marble rates of duty on Mexican onyx, as distinguished from onyx coming from any other country, it is but reasonable to infer that such exemption would have been specifically made.

We find the merchandise to be onyx, and hold it to be subject to duty at the rate of $1.50 per cubic foot, as assessed. The protest is overruled, and the decision of the collector is affirmed.

(T. D. 27847—G. A. 6520.)

Cuban treaty.

1. PREFERENTIAL TARIFF—PHILIPPINE ARCHIPELAGO—OTHER COUNTRIES.
   The Philippine Archipelago is not an "other country" within the meaning of that phrase as used in Article VIII of the Cuban treaty of December 27, 1903, and commodities coming from Cuba are dutiable at 20 per cent less than the rates provided in the tariff act of 1897, and not at 20 per cent less than rates provided for like commodities from the Philippines.
2. SAME—ARTICLES II AND VIII, CUBAN TREATY.
   Article II of the Cuban treaty of December 27, 1903, being more specific in its terms, is not modified or controlled by the general provisions of Article VIII of said treaty.
3. SAME—RECIPROCITY AGREEMENT WITH FRANCE AND OTHER COUNTRIES.
   Alcohol coming from Cuba is dutiable under the provisions of Article II of the Cuban treaty at 20 per cent less than the rate provided for alcohol by the tariff act of 1897, and not 20 per cent less than the rate provided therefor by the reciprocity agreements with France, Germany, Italy, and Portugal.

United States General Appraisers, New York, January 22, 1907.

In the matter of protests 194710, etc., of Havana Tobacco Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* These protests raise a question as to the construction to be placed upon certain paragraphs of the treaty between the United States of America and the Republic of Cuba, as the same was approved by Congress on December 17, 1903 (T. D. 24836). The protestants' contention is that, by the provisions of this treaty, certain cigars and other commodities imported from Cuba should be

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admitted into the ports of this country upon the payment of customs duties 20 per cent less than the rates paid upon like commodities coming from the Philippine Islands, which, under existing laws, pays 75 per cent of the rates provided for in the tariff act of 1897, and that certain alcohol, by virtue of said provision, should be admitted into the ports of the United States upon the payment of customs duties of 20 per cent less than are charged upon like merchandise coming from France, Germany, Italy, or Portugal, which merchandise coming from these countries, under certain reciprocity agreements made and entered into under section 3 of the tariff act of 1897, is admitted into this country at the rate of $1.75 per proof gallon. The rates of duty applied to all of such merchandise by the collector in the cases now before us were 20 per cent less than the regular duty provided therefor by the act of 1897.

The stipulations of the treaty which touch upon the questions here under consideration are contained in Articles II and VIII. Article II reads as follows:

ART. II. During the term of this convention, all articles of merchandise not included in the foregoing Article I and being the product of the soil or industry of the Republic of Cuba imported into the United States shall be admitted at a reduction of 20 per centum of the rates of duty thereon as provided by the tariff act of the United States approved July 14, 1897, or as may be provided by any tariff law of the United States subsequently enacted.

The pertinent part of Article VIII reads as follows:

ART. VIII. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue during the term of this convention preferential in respect to all like imports from other countries, and, in return for said preferential rates of duty granted to the Republic of Cuba by the United States, it is agreed that the concession herein granted on the part of the said Republic of Cuba to the products of the United States shall likewise be, and shall continue, during the term of this convention, preferential in respect to all like imports from other countries. (The remainder of this article relates entirely to the importation of sugar.)

The contention of the importer is that the stipulation of Article VIII that the rates of duty granted by the United States to the Republic of Cuba are and shall continue during the terms of the convention preferential in respect to all like imports from other countries, must influence and control all other stipulations of the treaty, and that the Philippine Islands are an *other country* within the meaning of this article.

A question very similar to this was under consideration by this Board in the Franklin Sugar Refining Company's case, G. A. 5980 (T. D. 26189), wherein it was contended that, under the provisions of Article II, sugar coming from the Island of Cuba should be admitted at 20 per cent less than 75 per cent of the regular rate charged upon like commodities coming from the Philippine Archipelago, by reason of the concluding language of said article, which,

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after fixing the rate at 20 per cent of the duty provided in the act of 1897, reads: "Or as may be provided by any tariff law of the United States subsequently enacted." With reference to that, the Board in its opinion said:

> This clause manifestly refers to any general tariff law which may supersede the present Dingley act, and not to any special law like that governing our tariff relations with the Philippine Islands.

It was pointed out that this conclusion was sustained by the proviso of Article VIII, which has no bearing upon the case now under consideration, as it refers entirely to sugar.

In the case of Fourteen Diamond Rings *v.* United States (183 U. S., 179), it was held that when the Philippine Islands ceased to be Spanish they ceased to be foreign country. In De Lima *v.* Bidwell (182 U. S., 180) the definition given years ago by Chief Justice Marshall, that a foreign country was one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States, was reaffirmed, and the same doctrine, in a general way, has been announced in a large number of cases. The ship *Adventure* (1 Brock., 235; 1 Fed. Cas., 202); the boat *Eliza* (2 Gall., 4; 8 Fed. Cas., 455); Taber *v.* United States (1 Story, 1; 23 Fed. Cas., 611); United States *v.* Recorder (1 Blatch., 218; 27 Fed. Cas., 718).

So far as it has application to the question involved in these cases, we are unable to see any difference between the phrase "a foreign country" as used in these decisions and the phrase "other countries" as used in Article VIII of the Cuban treaty. Other countries means countries other than the United States. To be a country other than the United States that country must be a country foreign to the United States—that is, a country "exclusively without the sovereignty of the United States." The Philippine Archipelago is no more an other country than Alaska, Hawaii, or Porto Rico. None of them are States of the American Union; but the government under which the people of each live is prescribed by the American Congress and all are within the sovereignty of the United States. Commodities from Alaska, Hawaii, and Porto Rico are all admitted into the United States free of duty, the same as commodities from Florida are admitted into New York or Pennsylvania. It would be as reasonable, therefore, to ask that the commodities of Cuba be admitted at 20 per cent less than the commodities of Porto Rico, which are admitted free of duty, as that they should be admitted at 20 per cent less than the products of the Philippine Archipelago, which are admitted at 75 per cent of the duties prescribed by the act of 1897.

This, we think, is conclusive and disposes of the importers' contention so far as the same is based upon the preferential Philippine tariff. But there is another aspect of the case which we think not only disposes of that contention, but also of the contention that

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the alcohol covered by the protests should be admitted at 20 per cent below the rate charged under reciprocity agreements on alcohol coming to the United States from France, Germany, Italy, or Portugal.

Article II of the Cuban treaty is specific and expressly declares that the rates of duty upon certain Cuban commodities shall be 20 per cent of the rates provided by the tariff act of 1897; while Article VIII is, to say the least, exceedingly general in its terms. It is a principle of the law of contracts, equally applicable we think to a treaty, that where two stipulations of a contract or agreement in writing shall conflict, the one which is the more specific shall control. These provisions of Article VIII, not being direct in terms, are not and can not be self-acting. The provisions of Article II are self-acting. Further than this we do not feel called upon to interpret or express any opinion as to the meaning of the language used in Article VIII or the intention of the high contracting parties in adopting it. If we were to hold that it varied the provisions of Article II to the extent of the importers' contention it would follow as a logical consequence that every tariff concession made by the United States to another country would, *ipso facto*, reduce the rate upon like commodities coming from Cuba. We think the question is parallel with that which has so frequently arisen relative to the favored-nation clause contained in the treaties between the United States and many of the European countries. In discussing the effect of that clause the Supreme Court, in Whitney *v.* Robertson (124 U. S., 190), said:

> It was never designed to prevent special concessions, upon sufficient considerations, touching the importation of specific articles into the country of the other. It would require the clearest language to justify a conclusion that our Government intended to preclude itself from such engagements with other countries, which might in the future be of the highest importance to its interests.

The provisions of Article VIII do not, in our judgment, in any way vary or effect the clear and express stipulations of Article II. These provisions could not act automatically, and, in the absence of legislation giving force and effect to them, the question as to whether or not the products of the soil or industry of Cuba should, under the language of that article, be admitted at a rate preferential in respect to like imports coming from countries with which we have reciprocal agreements reducing the regular rates is a political one of which this Board and the courts have no jurisdiction, and which can be settled only by the high contracting parties through the channels of diplomacy. Nicholas' case, G. A. 5670 (T. D. 25260); Bartram *v.* Robertson (122 U. S., 116); Whitney *v.* Robertson (124 U. S., 190).

The protests are overruled.

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(T. D. 27848—G. A. 6521.)

Onionskin paper not printing paper.

A thin, glazed paper, commonly called "onionskin" paper, held not to fall within the provision for printing paper suitable for books and newspapers contained in paragraph 396, tariff act of 1897. The fact that a paper can be printed on is not alone sufficient to warrant its classification as printing paper under said paragraph.—Gallenkamp *v.* Wyman (T. D. 27651) and Germania Importing Company *v.* United States (142 Fed. Rep., 215; T. D. 26876), affirming G. A. 6060 (T. D. 26442), cited and followed.

United States General Appraisers, New York, January 22, 1907.

In the matter of protest 205475 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers; HOWELL, G. A., absent).

FISCHER, *General Appraiser:* The merchandise consists of a thin glazed paper, commonly referred to as "onionskin" paper. Duty was assessed thereon at the rate of 25 per cent ad valorem under the provisions of paragraph 402, tariff act of 1897, as paper not specially provided for, and it is claimed to be dutiable properly at six-tenths of 1 cent per pound under paragraph 396 of said act as printing paper.

The precise question herein raised was passed on adversely to the contention of the importers in the case reported in T. D. 27651 as Gallenkamp *v.* Wyman, wherein the court decided that the evidence was insufficient to warrant a finding that the paper was printing paper suitable for books and newspapers. In the case before us the importers have endeavored to meet this decision by producing testimony in support of their claim, but it is clear that the attempt has fallen far short of success.

The best, certainly the most practical, test of the suitability of the paper for printing books and newspapers is its use for such purposes. Now, it is conceded by the importers that it is not suitable for newspapers, and in support of the contention as to books they produced but one witness, a representative of the importers, who are paper dealers, and he testified that he knew of only one instance where the paper had ever been used in a book. A copy of this book was introduced in evidence as an illustrative exhibit, and it appears therefrom that the only way in which the paper is employed as a part of the book is as insert pages facing the illustrations. The title of the picture and an extract from the literary work it illustrates are printed on the insert, but it is obvious that this particular paper

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was selected not because it was suitable for printing on but because its glazed surface prevented the illustrations from rubbing. The book other than the insert pages is printed on stock printing paper such as is ordinarily used in this class of work.

We are of opinion that this extremely limited use of the paper in books wholly fails to warrant the conclusion that it is "printing paper suitable for books and newspapers," as specified in paragraph 396. The paper can be printed on, it is true, but that alone is not sufficient to bring it within the tariff provision for printing paper. As was said in G. A. 6060 (T. D. 26442), referring to a glazed paper known as imitation parchment paper and much resembling that now before us, and the remarks are obviously applicable to the case at bar:

> It seems evident from this testimony that the claim that this paper is dutiable as printing paper has no other basis than that it can be printed on; but that is not sufficient to warrant its classification as such. * * *

On appeal, this decision was affirmed on the opinion of the Board in the case of Germania Importing Company *v.* United States (142 Fed. Rep., 215; T. D. 26876).

On the other hand, there is testimony by Government witnesses that the paper is largely used as writing paper, being preferred therefor on account of its light weight to save postage.

On the record herein and following the authorities cited, we overrule the protests and the decision of the collector will stand.

(T. D. 27849—G. A. 6522.)

Paper waste.

SWEEPINGS OF GOLD AND SILVER.

Photographic paper trimmings coated with nitrate of silver, and valuable only for the recovery of the silver contained therein, are properly dutiable under paragraph 463, tariff act of 1897, at 10 per cent ad valorem, as waste not specially provided for, and are not free of duty under paragraph 629 of said act, as sweepings of gold and silver.

United States General Appraisers, New York, January 22, 1907.

In the matter of protest 210435 of Handy & Harman against the assessment of duty by the collector of customs at the port of Niagara Falls.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; WAITE, G. A., absent).

SOMERVILLE, *General Appraiser:* The merchandise is invoiced as waste paper. It was returned by the local appraiser as "photographic paper trimmings," and was assessed for duty under paragraph 463 of the tariff act of 1897 as waste not specially provided for at 10 per cent ad valorem. The importers claim the article is free of duty under paragraph 629 of said act, which places on the free list "ores of gold, silver, copper, or nickel, and nickel matte, *sweepings of gold and silver.*"

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The testimony shows that the article in question consists of clippings of photographic paper, which are valuable only for the recovery of the silver contained in them. The paper is burned, so as to be utterly destroyed and reduced to ashes, from which a certain amount of silver is recovered. The form of the silver as contained in the paper is a coating of nitrate of silver, which is said to represent about 60 per cent of pure silver. Only one witness testified at the hearing, and this testimony was totally insufficient to establish a commercial designation for the term "sweepings of gold and silver," such as would include the paper waste in question. The presumption is, therefore, that this phrase is used in the ordinary signification.

The Standard Dictionary defines "sweepings" as "the refuse from the floors of an establishment in which precious metals are worked or handled, preserved to reclaim particles of gold or silver." The term "sweep washings" is also defined in Knight's American Mechanical Dictionary (vol. 3) as "the refuse of shops in which gold and silver are worked. These metals are separated by mechanical means and amalgamation." This definition is followed in the 6th volume of the Centuary Dictionary.

A similar article was passed on by the Department on December 6, 1883, which was classified under paragraph 493 of the tariff act of 1883 as waste not specially enumerated or provided for. Paragraph 798 of that act provided for "sweepings of silver or gold" (T. D. 6058). This classification, so far as we can discover, seems to have prevailed for more than twenty years past, and in cases of doubt should receive some consideration by the customs officers. This view seems to be supported by the fact that in said paragraph 629 the phrase "sweepings of gold and silver" would receive some color of meaning from the previous enumeration of the articles mentioned in that paragraph under the doctrine of *noscitur a sociis.*

We are inclined to the view that there is nothing in the testimony that would justify us in reversing the decision of the collector, which is accordingly affirmed.

(T. D. 27850.)

Abstracts of decisions of the Board of General Appraisers.

No. 14079.—Leaf Tobacco.—Protest 224494 of Max Schwarz against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the various bales to contain the following percentages of filler tobacco, and modified the collector's classification accordingly: Bales 1878 and 9560, 90 per cent; bale 9548, 88 per cent; bale 9551, 92 per cent, and bale 9561, 100 per cent.

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No. 14080.—FELT BANDS.—Protests 27795 *h*, etc., of Judkins & McCormick Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by Lunt, G. A.

Protests sustained on the authority of Herrmann *v.* United States (141 Fed. Rep., 486; T. D. 26598), relating to felt bands.

No. 14081.—DECORATED GLASS BASKETS.—Protest 219743–22299 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by Sharretts, G. A.

The protest related to a silver gilt and crystal basket, which was held to have been properly classified as decorated glassware under paragraph 100, tariff act of 1897.

No. 14082.—GLASS PHOTOGRAPHERS' BATHS.—Protest 214259 of Anthony & Scovill Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Abstract 9892 (T. D. 27087), relating to glass photographers' baths.

No. 14083. — PINS — ORNAMENTS — BEADS.—Protests 131544, etc., of Wiener Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by Sharretts, G. A.

The importers' contentions, which related to pins, ornaments, beads, etc., were disposed of in accordance with the following authorities: Abstract 5635 (T. D. 26248), G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), and Frankenberg *v.* United States (144 Fed. Rep., 704; T. D. 26455).

No. 14084.—MOLDERS' PATTERNS.—Protest 162802 of St. Louis Car Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

No. 14085.—MOLDERS' PATTERNS.—Protest 161415 of Curtis & Neff Screw Company against the assessment of duty by the collector of customs at the port of Buffalo.

Same as No. 14084 (*supra*).

No. 14086.—MOLDERS' PATTERNS.—Protest 203814–20973 of Municipal Engineering and Contracting Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14084 (*supra*).

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No. 14087.—MOLDERS' PATTERNS.—Protests 156009, etc., of National Malleable Castings Company against the assessment of duty by the collector of customs at the port of Cleveland.

Same as No. 14084 (*supra*).

No. 14088.—MOLDERS' PATTERNS.—Protests 212032, etc., of John Reeve *et al.* against the assessment of duty by the collector of customs at the port of Newport, Vt.

Same as No. 14084 (*supra*).

No. 14089.—MOLDERS' PATTERNS.—Protests 168256, etc., of R. F. Downing & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same at No. 14084 (*supra*).

No. 14090.—MOLDERS' PATTERNS.—Protests 157483, etc., of W. H. Tummonds *et al.* against the assessment of duty by the collector of customs at the port of Port Huron.

Same as No. 14084 (*supra*).

No. 14091.—FLORAL WATER.—Protest 217922 of Euler & Robeson against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6436 (T. D. 27600), relating to floral water.

No. 14092.—CATGUT CUT INTO LENGTHS.—Protest 218192 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907.

The merchandise, which was classified as strings for musical instruments under paragraph 453, tariff act of 1897, was claimed to be free of duty under paragraph 517, relating to unmanufactured catgut. Protest sustained.

MCCLELLAND, *General Appraiser:* * * * The testimony in the case is meager, but it is sufficient to show that the merchandise is what is commonly known in trade as catgut, and although cut into lengths suitable for violin strings it is not, in the condition imported, ready for use as such; that before the strings may be used on violins they must be stretched on a frame, spun, and covered with wire. They are not, therefore, strings for musical instruments within the meaning of the language of the paragraph under which duty was assessed.

The Board held in G. A. 5887 (T. D. 25940) that tennis gut which is ready for use in stringing tennis racquets is commercially known as catgut in the crudest form in which catgut is dealt in in the trade.

An examination of the official samples here shows the merchandise to be substantially in the condition in which the said tennis gut was at the time of importation, and the mere cutting of it into lengths suitable for violin strings neither makes it strings for musical instruments nor a manufacture of catgut.

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No. 14093.—Reel Stock.—Protest 216229 of E. Dillingham against the assessment of duty by the collector of customs at the port of Ogdensburg. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of G. A. 6485 (T. D. 27741), relating to reel stock.

No. 14094.—Schmaschen Gloves.—Protest 213521 of Smith-McCord-Townsend Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by McClelland, G. A.

The merchandise was held dutiable as schmaschen gloves, as claimed by the importers, under paragraph 440, tariff act of 1897.

No. 14095.—Salame—Bologna Sausage.—Protest 207193 of Romani & Martini against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 16, 1907.

The protest related to Italian sausage called salame or salami, classified as prepared meat under paragraph 275, tariff act of 1897, and claimed to be dutiable as bologna sausages under paragraph 655. Protest overruled.

Waite, *General Appraiser:* * * * Salame is a sausage made of coarsely chopped ingredients in a hard and dry condition packed in a large casing, and is probably composed wholly or chiefly of pork. The Board considered the classification of salame in the case of Vitelli & Son, G. A. 6371 (T. D. 27361), and upon the evidence there introduced held that it was not what is commercially known as bologna sausage in this country. The facts in that case are stated by the Board as follows:

> Salame, or summer sausage as it is sometimes called, is an Italian sausage in a very hard and dry state, composed of coarsely chopped meat packed in large casings. According to the importer's own testimony this meat is entirely pork. Two witnesses appeared in behalf of the Government, who were men of long experience in the manufacture and sale of bologna in this country. It appears from their testimony that bologna, as understood in the trade here, is a fresher product than salame, and is composed of beef or of beef and pork finely chopped and inclosed in casings, but is never entirely of pork. It is further affirmatively shown that salame is not bologna in the understanding of the trade, but, although sometimes referred to by retail customers as bologna, is always bought and sold at wholesale as salame and not as bologna

As such a state of facts would tend to support the action of the collector in this case, we think he is entitled to a presumption of their existence until the importer prove the contrary, even if the Board should refuse to take cognizance of the record in the former case. United States *v.* Schering (123 Fed. Rep., 65).

The evidence of two witnesses has been introduced in this case with the apparent object of proving that salame is the true bologna sausage and one of the products for which the city of Bologna, Italy, is famous. The intimations to this effect, however, were evoked largely by leading questions, and there is no convincing proof that "salame" and "bologna sausage" are interchangeable terms. In Baretti's Italian dictionary the word "salame" is defined as "Italian pork sausage," while another term, "mortadella" or "mortadella di bologna," is used by the same authorities to designate bologna sausage.

While it may be fairly supposed from its etymology that the term "bologna sausage" originally designated a sausage made at Bologna, Italy, it is by no means clear from the record that salame was that sausage. If it were it is nevertheless true

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that in the United States "bologna sausage" may, probably does, denote in commercial transactions a product entirely different from that which gave rise to the name. No evidence in the present case warrants a finding that salame is commercially known in this country as bologna sausage, and it is the usage in our own markets that primarily must be considered in interpreting the tariff. Two Hundred Chests of Tea (9 Wheat., 428). The evidence given in the Vitelli case (*supra*) is so much more in accord with common knowledge upon the subject that the Board should not reverse the collector's action based upon that decision without more persuasive evidence than is now offered.

No. 14096.—PROTEST UNSUPPORTED.—Protest 217887 of Abraham & Straus against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 16, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14097.—PROTEST UNSUPPORTED.—Protest 221036 of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14096 (*supra*).

No. 14098.—PROTEST UNSUPPORTED.—Protest 201953 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14096 (*supra*).

No. 14099.—LUMBER TONGUED AND GROOVED—COPING.—Protest 221038 of John S. Rutherford against the assessment of duty by the collector of customs at the port of Ogdensburg. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907. Opinion by McClelland, G. A.

The protest related to so-called coping, planed on one side and tongued and grooved, and used as house siding. The Board held it to have been improperly classified as manufactures of wood under paragraph 208, tariff act of 1898, and to be dutiable, as claimed by the importer, under the provision in paragraph 195 for sawed lumber planed, tongued, and grooved. Note Abstract 13267 (T. D. 27685).

No. 14100.—SHIP PLANKING.—Protests 220976, etc., of B. R. Laurence against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907. Opinion by McClelland, G. A.

The merchandise was claimed to be free of duty under paragraph 699, tariff act of 1897, as ship planking. Protest overruled. Note Abstract 13286 (T. D. 27685).

No. 14101.—SCHMASCHEN GLOVES.—Protest 219713 of George B. Peck Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907. Opinion by McClelland, G. A.

A portion of the merchandise was held dutiable as schmaschen gloves, as claimed by the importer.

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No. 14102.—MINERAL ADVANCED IN VALUE—STONE BLOCKS.—Protest 216224 of John L. Vandiver against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907.

The protest related to blocks of Dalmore grit stone classified as unenumerated manufactured articles under section 6, tariff act of 1897, and claimed to be free of duty under paragraph 614 as minerals not advanced in value or condition. Protest overruled.

McCLELLAND, *General Appraiser:* * * * An examination of said sample shows the stone to have had considerable labor expended upon it; such in our judgment as to fit it for a particular use, at least more than was necessary for mere convenience in transportation. It has unquestionably been advanced in value by a process of manufacture, and thus it is no longer a crude mineral such as was intended by Congress to be covered by said paragraph 614, and there being no special provision in the tariff act covering the same, duty was properly assessed under section 6. See Waddell *v.* United States (T. D. 25781).

No. 14103.—REEL STOCK.—Protest 210172 of Starke Hardware Company against the assessment of duty by the collector of customs at the port of Buffalo. January 17, 1907.

Same as No. 14093 (*supra*).

No. 14104.—FIRE BRICK.—Protest 19263–20906 of Wakem & McLaughlin against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 6382 (T. D. 27422), relating to fire brick.

No. 14105.—OLIVE OIL.—Protest 223002 of Guiseppe Masceri against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 17, 1907. Opinion by McClelland, G. A.

The merchandise was held free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for manufacturiug purposes.

No. 14106.—FLORAL WATER.—Protests 219277, etc., of Euler & Robeson *et al.* January 17, 1907.

Same as No. 14091 (*supra*).

No. 14107.—LACE WEARING APPAREL.—Protests 219254, etc., of H. S. Beer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 17, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 5866 (T. D. 25844), relating to lace wearing apparel.

No. 14108.—MOLDERS' PATTERNS.—Protest 165280 of St. Louis Car Company. January 17, 1907.

Same as No. 14084 (*supra*).

No. 14109.—MOLDERS' PATTERNS.—Protests 156011, etc., of Otis Steel Company against the assessment of duty by the collector of customs at the port of Cleveland. January 17, 1907.

Same as No. 14084 (*supra*).

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No. 14110.—MOLDERS' PATTERNS.—Protests 153158, etc., of Otis Steel Company *et al.* against the assessment of duty by the collector of customs at the port of Buffalo. January 17, 1907.

Same as No. 14084 (*supra*).

No. 14111.—MOLDERS' PATTERNS.—Protests 150909, etc., W. H. Allison *et al.* against the assessment of duty by the collector of customs at the port of Detroit. January 17, 1907.

Same as No. 14084 (*supra*).

No. 14112.—FEATHERSTITCH BRAIDS.—Protests 218862, etc., of Calhoun, Robbins & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 17, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14113.—SAMPLES.—Protest 203443 of Southern Pacific Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 17, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of G. A. 1915 (T. D. 13677), relating to samples.

No. 14114.—SESAME PULP.—Protests 216352, etc., of G. Debany *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 17, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of United States *v.* Saloom (144 Fed. Rep., 1022; T. D. 27195), relating to sesame pulp.

No. 14115.—MARKET VALUE.—Protest 212171 of Mrs. L. Heitman against the assessment of duty by the collector of customs at the port of St. Paul. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 17, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of United States *v.* Passavant (169 U. S., 16), relating to market value.

No. 14116.—PROTESTS ABANDONED.—Protests 211895, etc., of H. Bayersdorfer & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 17, 1907.

Protests abandoned; overruled.

No. 14117.—PROTEST UNSUPPORTED.—Protest 216753 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 17, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 14118.—PROTEST UNSUPPORTED.—Protest 213082 of F. W. Myers & Co against the assessment of duty by the collector of customs at the port of Plattsburg.

Same as No. 14117 (*supra*).

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No. 14119.—PROTEST UNSUPPORTED.—Protest 212350 of J. B. Inderrieden Company against the assessment of duty by the collector of customs at the port of St. Paul.

Same as No. 14117 (*supra*).

No. 14120.—PROTEST UNSUPPORTED.—Protest 216642 of W. H. Tummonds against the assessment of duty by the collector of customs at the port of Port Huron. Opinion by Hay, G. A.

Same as No. 14117 (*supra*).

TREASURY DEPARTMENT, *January 23, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 27851.)

Forfeiture—Smuggling.

UNITED STATES *v.* 218¼ CARATS LOOSE EMERALDS.

U. S. District Court, Southern District of New York. January 11, 1907. No. 219.

1. FRAUDULENT ENTRY—FALSE STATEMENT, APPLIANCE OR PRACTICE.

The first part of section 9, customs administrative act of 1890, relating to the entry of imported merchandise "by means of any fraudulent or false statement, * * * practice or appliance," is intended to relate to merchandise intentionally entered rather than to that the importation of which has been concealed.

2. FORFEITURE—FALSE STATEMENT—WILLFUL ACT OR OMISSION.

Where a person arriving in the United States falsely and intentionally denies, on being questioned by the customs officers, that he has any precious stones in his clothes or on his person, he is guilty of attempting a "willful act or omission by means whereof the United States shall be deprived of the lawful duties," within the meaning of section 9, customs administrative act of 1890, providing the penalty of forfeiture for such offense.

3. BAGGAGE—ARTICLES ON THE PERSON—DECLARATION.

Articles carried in the clothing of a passenger arriving in the United States are "baggage" within the meaning of section 2802, Revised Statutes, relating to the entry of baggage; and if they are dutiable the passenger is bound to declare them in all respects the same as if they were contained in his trunk.

4. MERCHANDISE UNLADEN WITHOUT PERMIT—ARTICLES ON THE PERSON.

A person arriving in the United States took ashore with him from the vessel, without a permit from the customs officers, precious stones that were concealed in his clothing, *Held* that this was an infraction of section 2872, Revised Statutes, forbidding the unloading of merchandise without a permit.

5. REQUIREMENT OF ENTRY OR INVOICE—SMUGGLED MERCHANDISE.

Section 4, customs administrative act of 1890, requiring an invoice or declaration of imported merchandise, is intended to relate to merchandise intentionally entered, and not to that the importation of which has been concealed.

6. SMUGGLING—COMPLETION OF OFFENSE—SEIZURE WITHIN CUSTOMS LINES.

A passenger on a vessel arriving in the United States had gone from the vessel to the dock; his baggage was examined, and he then told the customs officers that he had no precious stones on his person, whereupon, while he was still within the customs lines on the dock, stones in his possession were seized as smuggled. *Held* that the act of smuggling was complete, and that it was not necessary that he should have passed outside of the customs lines before the seizure was made.

ON information for forfeiture.

Henry L. Stimson, United States attorney, and *Winfred T. Denison* and *Felix Frankfurter*, assistant United States attorneys, for the United States.

Louis S. Phillips, for the claimant.

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HOLT, *District Judge:* This action is brought for the forfeiture of certain emeralds alleged to have been brought into this country in violation of the customs laws. The claimant, Manuel J. Suarez, a resident of Bogota, in the Republic of Colombia, South America, arrived at New York on October 8, 1906, on the steamship *Oceanic*, from England. His native language was Spanish. He could not speak English, but had some knowledge of the French language, although how much does clearly appear. On the arrival of the ship the customs officer who took the declarations of the passengers asked him in French if he understood French, and he said that he did. He asked him how many pieces of baggage he had, and he answered three. The examiner testified that he did not seem to clearly understand his questions as to what particular kind of baggage he had. The examiner thereupon drew his pen through the printed form on the declaration for the insertion of the number of trunks, bags or valises, boxes, and other packages, and wrote under the head of "total" at the end the figure 3. The officer asked him in French whether he had anything to declare, whether he had any gifts for other persons, and whether he had anything to sell, to all of which he answered "no." Thereupon Suarez signed his name at the end of the declaration, and swore to it before the officer. Suarez then left the ship and went on the dock. He had as baggage a trunk, a box, and two hand bags tied together. He stated to the customs officer on the dock that he was going to Colombia; that he wished to leave with the collector the trunk and the box, and that he wished to take with him while in this country the two bags. They were thereupon opened, the contents examined and found to contain nothing dutiable, and were labeled by the customs inspector as being passed. The customs inspector then called another inspector, who spoke Spanish, and directed him to ask Suarez whether he had any precious stones or jewelry upon his person or in his pockets. The inspector did so in Spanish, putting various specific and particular inquiries, and to all of them Suarez answered in the negative. He was then taken on board the steamer and searched, and in the pocket of his overcoat was found a package which contained cut emeralds, loose and unpierced, weighing 218½ carats, which were thereupon seized by the Government and which are the subject of this suit for confiscation. The information claims that these goods should be forfeited on the ground that the merchandise was imported by means of a fraudulent and false written statement and affidavit, to wit, the sworn baggage declaration, and by means of a fraudulent and false verbal statement, to wit, the false statement that he had not any precious stones in his baggage, and by means of a false and fraudulent practice, to wit, that he had the emeralds concealed on his person at the time of landing, in violation of section 9 of the act of Congress of June 10, 1890, commonly called the customs administration act. The essential part of such section is as follows:

> That if any owner, importer, consignee, agent, or other person shall make or attempt to make any entry of imported merchandise by means of any fraudulent or false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from the person making the entry, shall be forfeited.

In my opinion, the first part of section 9 relates to fraudulent or false invoices or other papers or statements, written or verbal, or practices or appliances, resorted to or employed in connection with the entry of merchandise the entry of which itself is not concealed. I think, therefore, that the evidence in this case does establish the charge contained in the original first cause of forfeiture alleged in the information. Upon the trial, however, the first cause of information was amended by alleging that Suarez was guilty of a willful act and omission by means whereof the United States might be and was deprived of lawful duties accruing upon the said merchandise, to wit, in willfully

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omitting to mention said merchandise in the declaration and statements, written and oral, made by him to the customs officers. This amendment states a case covered by the latter part of section 9 of the customs administration act, and, in my opinion, is established by the evidence. The baggage declaration which Suarez signed and swore to states, in its printed form, that he arrived with the total of three pieces of baggage; and, regarding the two handbags which were fastened together as one, this statement was correct. I think that, strictly speaking, this package of emeralds was not baggage or a part of baggage. It may, however, have been brought over in one of the trunks, boxes, or bags of Suarez, in which case it would have been his duty to declare it in the declaration. The fact that French was not his native language, and that he was not examined in Spanish at the time the declaration was made, would make it proper not to lay too much weight on his omission to declare these emeralds as part of his baggage, although the inspector testified that he asked him whether he had anything to declare or any gifts or anything to sell. But the evidence of Hawes, the inspector, who spoke Spanish, that he explicitly and repeatedly asked him whether he had any jewelry or precious stones in his pockets or about his person, to all of which questions he replied "no," satisfies me that Suarez understood the purpose of the inquiry and was intentionally concealing the fact. He states in the written statement, which he made immediately after the seizure, as follows:

> When the interpreter asked me if I had brought here any jewelry or precious stones, and I told him "no," it was not with the intention of denying that I had brought the larger package; but as they were not intended to be left here, I did not think they should be declared, and especially so as they should be taken charge of by the collector.

I think, therefore, that the evidence establishes that Suarez was guilty of a willful act or omission, by means whereof the United States was deprived of the lawful duties accruing upon the emeralds, by carrying them concealed in his coat pocket and denying that he had any such precious stones upon his person.

The second cause of forfeiture alleged in the information charges that the emeralds were found in the baggage of Suarez, to wit, in a parcel carried by him in his pocket, and that the merchandise was not mentioned at the time of making entry of his baggage, contrary to the provisions of section 2802 of the United States Revised Statutes. There is nothing in the evidence to show that these stones ever were carried in the trunk, box, or bags constituting Suarez's baggage. Even if they had been, they would not be strictly baggage. These were loose, unpierced cut emeralds. They could not be used for any personal purpose, and did not constitute baggage in the common-law sense of that term. The steamship company would not have been subject to the liability which a common carrier is under in respect to the baggage of a traveler if they had been lost while in its custody. They were, in fact, merchandise, being brought into this country on the person of Suarez. It is a singular fact that the United States statutes contain no specific provision applicable to such a case. The general provisions in regard to the importation of merchandise have in view the ordinary importation of goods as a part of the cargo of a ship and not in the personal custody of anyone. The provision in regard to a passenger's baggage assumes that whatever small articles a passenger brings into this country will be contained in his trunk or bags. The case of a person bringing merchandise into this country in his pockets is not specifically provided for by any statute. I think, however, that such merchandise may be treated as baggage within the sense of the custom laws. A package carried in the pocket does not differ essentially from a package carried in the hand, and, in my opinion, if it contains dutiable merchandise, the passenger is bound to declare it in all respects the same as he is bound to declare merchandise contained in his trunk.

The third cause of forfeiture stated in the information is, in substance, that Suarez unloaded the said merchandise from the vessel without a permit from the collector or any naval officer as required by section 2872 of the United States Revised Statutes.

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This section obviously is intended generally to apply to the unloading of general merchandise, which has been imported in a vessel in the ordinary manner, unaccompanied by the owner or consignee; and it seems at first a rather strained construction to apply it to the case of a passenger carrying merchandise upon his person, but I think it applies. These emeralds were either merchandise or baggage. If they were merchandise, they could not be landed from the vessel without a permit, and the permit in the case of a passenger carrying them upon his person would be obtained upon his declaring, before he left the ship, that he had them, and providing for the payment of the duties on them. I think the evidence in this case sustains the third cause of forfeiture alleged in the information.

The fourth cause of forfeiture alleges two distinct grounds of proceedings. The first is, in substance, that these emeralds were imported without an invoice or declaration, as required by section 4 of the customs administrative act. I think that this section prescribes what papers shall be produced and what proceedings shall be taken in connection with an actual intentional entry of merchandise, and that it does not apply to a case where the entry of the merchandise itself is concealed. The second ground stated in the fourth cause of forfeiture is that Suarez unlawfully and knowingly smuggled and clandestinely introduced the emeralds into the United States in violation of section 2865 of the United States Revised Statutes. This is the general section providing for the forfeiture of smuggled goods. The United States Supreme Court held in Keck *v.* United States (172 U. S., 434) that under this section goods can not be forfeited as having been smuggled until they have actually left the ship and reached the shore. In that case the owner of certain diamonds in Europe requested the captain of a steamer to bring the package containing them to this country and mail it to the address of a person who was his partner in the West, assuring the captain that the package contained nothing valuable. The goods were seized by the customs inspectors before they left the ship. The Supreme Court held, against a strong dissenting opinion, that the goods were not forfeited under this smuggling statute because the offense of smuggling, at common law, was not completed until the goods had left the ship and reached the shore; that although it was apparent that the owner intended to smuggle when he delivered them to the captain of the vessel, he could change his mind at any time until they actually left the ship, and, if he had done so, the goods would not have been forfeited. Counsel for the claimant in the cause at bar claims that that case controls in this case. The evidence shows that the emeralds in question, although they were taken off the ship on to the dock, had not been taken outside of the custom-house lines on the dock. It is argued that the custom-house lines on the dock are simply established for the convenience of passengers; that the custom-house officers might examine the property on the vessel; that until any property has passed the custom-house lines it is to be regarded as being on the vessel; and that therefore the smuggling act does not apply to these emeralds. But, in my opinion, the fact that these emeralds were taken off the ship to the shore is sufficient to make them subject to the provisions of the section prohibiting smuggling. Suarez took them with him on the dock. He had them with him when his baggage was examined. He was particularly interrogated as to whether he had any such stones with him, and denied it. The argument of the claimant's counsel would go the length of saying that under those circumstances the customs authorities could do nothing, and must wait until he had gone out through the custom-house lines before they could arrest the person of the passenger or seize the precious stones concealed upon his person. I think that when the proper officer of the customs examined his baggage and put to him the questions whether he had any personal property which he had not declared, or any precious stones upon his person or in his pockets, he was obliged to state the truth, and that, when that examination was finished and he still had these emeralds in his pocket without having admitted it, the act of smuggling was complete.

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I felt at first some doubt in this case. Suarez speaks no English. He lives in South America, and was going there. He declared his intention of leaving a portion of his baggage with the collector, and my first impression was that, being ignorant of our language and of our customs laws and of the practice of declaring dutiable articles on arrival at this port, he might really have intended to leave these emeralds with the collector while he stopped in New York with a part of his luggage. But a careful consideration of the evidence convinces me that he completely comprehended what the questions were that were put to him, and that, if he had honestly intended to make no use of these emeralds in this country, but to take them with him to South America, he would either have put them in the trunk or box which he was to leave with the collector, or would have announced, at the same time that he said he was going to leave his trunk and box with the collector that he also had a package of emeralds which he would leave with him. His own declaration made at the time shows that he understood the questions which were put to him, and the reasons that he gives for giving false answers to the questions are, in my opinion, unsatisfactory and entirely insufficient.

My conclusion is that the Government is entitled to a judgment of forfeiture in this case.

(T. D. 27852.)

Scrap iron.

SHELDON *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4162.

SCRAP IRON—OLD CHAINS—JUNK.

Old worn-out iron chains, fit only for remanufacture, are subject to classification under paragraph 122, tariff act of 1897, as "scrap iron" rather than under paragraph 588 as "junk, old."

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as G. A. 6231 (T. D. 26917), affirmed the assessment of duty by the collector of customs at the port of New York on an importation by G. W. Sheldon & Co.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The single question presented is whether the importation of old iron chains is specifically included in paragraph 122 of the tariff act of 1897, which provides for the payment of duty upon "wrought and cast scrap iron, * * * but nothing shall be deemed scrap iron or scrap steel except waste or refuse iron or steel fit only to be remanufactured." The petitioners claim that the articles are entitled to free entry under paragraph 588 as "junk, old."

As applied to the merchandise in controversy, paragraph 122 is thought to be more specific and the collector rightly assessed the same thereunder. The Board of General Appraisers, in a careful and exhaustive decision, overruled the protest, and, replying to the arguments of the importers, cited precedents which justified the decision that Congress intended that old iron chains should be comprehended within the broad scope of paragraph 122, and therefore are not junk. I concur in the reasoning upon which the decision is based, and it therefore follows that the decision of the Board must be affirmed.

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(T. D. 27853).

Splash mats.

WOOLWORTH *v.* UNITED STATES (*a*).

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4140.

SPLASH MATS—PAINTINGS—ARTICLES OF UTILITY.

Splash mats or screens on which pictures have been produced by stenciling and hand painting, the decoration being secondary to their employment as articles of utility, are not "paintings" within the meaning of paragraph 454, tariff act of 1897.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see Abstract 8593 (T. D. 26802), in which the Board, on the authority of *In re* Zinn, G. A. 4492 (T. D. 21406), affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by F. W. Woolworth & Co.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The articles in question consist of wood strips joined or sewn together and known in trade as splash mats or screens. They were correctly assessed for duty by the collector at 35 per cent ad valorem as manufactures of wood under paragraph 208 of the act of 1897. The articles are not paintings, as claimed by the importers, even though pictures or landscapes appear thereon. The testimony shows that the outlines of the pictures are first stenciled and then painted by hand, but the mats or screens are articles of utility and the decorative or coloring feature is secondary. As a precedent for holding that the articles in fact are dutiable as "paintings" under paragraph 454 of said act, the importers cited United States *v.* China and Japan Trading Company (58 Fed. Rep., 690). In that case the articles were wall decorations and were not "objects of utility."

The decision of the Board is affirmed.

(T. D. 27854.)

Measurement of fish in tins.

GANDOLFI *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4379.

FISH IN TINS—MEASUREMENT—"CONTAINING."

In construing paragraph 258, tariff act of 1897, providing for fish in tins "containing" various quantities, *Held* that the ascertainment of those quantities should be based on the actual capacity of the tins rather than on the amount of fish contained in them.

ON application for review of a decision of the Board of United States General Appraisers.

This case relates to G. A. 6400 (T. D. 27490), which affirmed the assessment of duty by the collector of customs at the port of New York on an importation by L. Gandolfi & Co. This importation consisted of fish in tins, having a separate piece of tin with a small piece of wood pressed down on the fish to hold it in place, thus leaving a vacancy in each tin. The importers contended that in ascertaining

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a The former report in this case, in T. D. 27766, was prepared on the understanding that no opinion would be rendered.

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whether the tins contained more or less than 33 cubic inches under paragraph 258, tariff act of 1897, this vacancy should be allowed for and only the cubic measurement of the fish should be considered.

Everit Brown, for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The merchandise in question, consisting of anchovies contained in tin boxes or cans, is dutiable under paragraph 258 of the tariff act of 1897. Duty was assessed by the collector at 10 cents per box as "containing more than thirty-three and not more than seventy cubic inches." The protestants assert that the merchandise is dutiable at only 5 cents per box as "containing * * * more than twenty-one and not more than thirty-three cubic inches."

Upon the authority of *In re* Johnson *et al.* (56 Fed. Rep., 822) and Kauffman Brothers *v.* United States (99 Fed. Rep., 430), holding that it was not so much the intention of Congress to impose a duty on fish as upon the tin cans in which the same are contained, and the opinion of the Board clearly stating the impracticability of opening the tin boxes or cans in which the fish are imported in order to ascertain the precise quantity therein contained, the contention of the importers is overruled and the decision of the Board affirmed.

NOTE.—No appeal was taken in this case.

(T. D. 27855.)

Dyers' sticks.

UNITED STATES *v.* KNIPSCHER & MAAS SILK DYEING COMPANY (2 cases).

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suits 4249 and 4250.

1. DYERS' STICKS—BAMBOO.

Bamboo dyers' sticks, of which the ends are rounded and the rough joints smoothed, are subject to classification under paragraph 700, tariff act of 1897, as "bamboo," rather than under paragraph 198 as "wood, unmanufactured."

2. SAME—WOOD UNMANUFACTURED—"MANUFACTURE."

Hard-wood sticks about 1 inch in diameter, prepared for the use of dyers by being trimmed, peeled, and having the rough places removed, held not to be manufactured within the meaning of the provision for manufactures of wood in paragraph 208, tariff act of 1897, but to be dutiable as "wood, unmanufactured," under paragraph 198.

ON application for review of decisions of the Board of United States General Appraisers.

For decisions below see Abstracts 11126–7 (T. D. 27331), reversing the assessment of duty by the collector of customs at the port of New York.

The former decision related to hard-wood sticks about 1 inch in diameter, which had been trimmed and peeled and from which the rough places had been removed. The Board held on the authority of *In re* Karcher, G. A. 578 (T. D. 11219), that these articles had been improperly classified as manufactures of wood under paragraph 208, tariff act of 1897, and that they should have been classified as "wood, unmanufactured," under paragraph 198.

The latter decision related to bamboo sticks of the description given in the following opinion, which were held by the Board, on the authority of *In re* Jaeck, G. A. 6061 (T. D. 26850), to have been improperly classified as unmanufactured wood under said paragraph 198, on the ground that they were more specifically enumerated as "bamboo" in paragraph 700.

J. Osgood Nichols, assistant United States attorney, for the United States.

Everit Brown, for the importers.

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HAZEL, *District Judge:* The conclusions of the Board of General Appraisers that the bamboo sticks in question, which are about 4 feet in length, are entitled to free entry under the provisions of paragraph 700 of the act of 1897 is affirmed. The bamboo sticks, which were invoiced in bundles, are commercially known as dyers' sticks and are used by dyers for hanging on dyeing material. It appears that the ends of the bamboo sticks are rounded and that their rough joints have been smoothed. In Brauss *v.* United States (120 Fed. Rep., 1017) it was held that splitting bamboo sticks and cutting them into lengths for use in making brooms does not change their character, they still being bamboo sticks. The Government claims the Brauss case is distinguishable in that there the article was not a manufacture, while in this case the rounding of the ends and the smoothing of the joints clearly constitute a manufacture. Upon this point it is sufficient to say that I agree with the Board that the identity as bamboo has not been destroyed by the work done upon them.

As to the hard-wood sticks, duty was assessed by the collector at 35 per cent ad valorem under paragraph 208 of the present tariff act. The importers claim that the classification should have been at 20 per cent ad valorem under paragraph 198. The articles are used for dyers' sticks. The decision of the Board that the merchandise was dutiable under paragragh 198 as wood unmanufactured is thought to be correct.

The decision of the Board is sustained.

(T. D. 27856.)

Lace paper, printed.

UNITED STATES *v.* HENSEL.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4181.

LACE PAPER—INCIDENTAL PRINTING—PRINTED MATTER.

The provision for "printed matter" in paragraph 403, tariff act of 1897, does not include material on which the printing is a subordinate feature; and so-called lace paper, consisting of sheets which are perforated in various designs in imitation of lace and have the names and addresses of merchants printed thereon, and which are used in packing raisins and by confectioners, is not dutiable under said provision, but as manufactures of paper under paragraph 402.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as G. A. 6260 (T. D. 26992), sustained protests of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Note T. D. 27045, directing the application for review

J. Osgood Nichols, assistant United States attorney, for the United States.

William B. Dungan, for the importers.

HAZEL, *District Judge:* The merchandise consists of sheets of paper of different sizes, the centers of some of which are plain, with perforated and embossed border in resemblance of a lace pattern; sheets of perforated paper with the name and address of a merchant printed thereon; perforated paper for decorating raisin boxes; and confetti stamped from large sheets of paper. Duty was assessed thereon by the collector at 35 per cent ad valorem under paragraph 407 of the act of 1897 as manufactures of paper or of which paper is the component material of chief value. The importers protested and claimed that the goods were dutiable at 25 per cent under paragraph 402, as paper not specially provided for, or as printed matter under paragraph 403, or as surface-coated paper under paragraph 398. The Board of General Appraisers decided that the doilies, lace tops, and vinetas, which have no printing thereon, and

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the confetti were articles manufactured from paper and dutiable under paragraph 407, while the so-called lace-paper top and side pieces for raisin boxes or cartons, and doilies, with printing thereon, were dutiable under paragraph 408 as printed matter.

The Government has made application for review to this court. Reliance is placed by the United States attorney upon the case of Kraut *v.* United States (134 Fed. Rep., 701: T. D. 25829; affirmed, 142 Fed. Rep., 1087; T. D. 26946) in support of the contention that the articles are in fact manufactures of paper and not printed matter. The importers urge that the printing on the paper bags in the Kraut case was merely incidental and did not to any extent affect their usefulness as bags, while in this case the purpose of printing upon the lace papers the name of the merchant using the same was to advertise the commodity to which they were applied as wrappers, covers, or side pieces of wrappers. The facts, however, do not sustain this contention. The primal object of the lace paper is the ornamentation or decorative feature. The proofs show that the articles are manufactured by placing sheets of the desired quality of paper under a steel die, and the figures, designs, or lace patterns are produced by being stamped or cut with the press. The operation is not thought to come within the category of printing as that term is defined in Arthur *v.* Moller (97 U. S., 365). The facts show that the raw paper is the article of chief cost in the finished product, the cost of stamping being about 25 per cent; and the market price of the importation is estimated at treble the cost of manufacture. The finished articles are used as doilies, covers, wrappers for raisins, side and end pieces of raisin wrappers, or confectioners' supplies. The articles have been materially changed from paper. They have, in fact, lost their character of paper; and the printing on the exhibits, considering their primal purpose. is a subordinate feature. They are essentially different from labels or visiting cards having printed matter, ornamentation, or finished borders thereon, which manifestly serve an entirely different purpose; and the printing unquestionably is the important feature. Hence, this case is thought to be controlled by the principle of the Kraut case.

The decision of the Board, therefore, is modified and the conclusion of the collector on the specified articles approved.

(T. D. 27857.)

Decorated china.

UNITED STATES *v.* THURNAUER.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4016.

DECORATED CHINA—BROWN GLAZE.

Chinaware having a brown color or stain on the sloping underside, found to be commercially known as decorated china and held dutiable as such under paragraph 95, tariff act of 1897.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 6309 (T. D. 26338), sustained a protest of G. M. Thurnauer & Bro. against the assessment of duty by the collector of customs at the port of New York. Note T. D. 26382, directing the application for review. The opinion filed by the Board reads as follows:

SHARRETTS, *General Appraiser:* The appraiser reports: "The merchandise consists of plates and dishes made of china, and not earthenware as claimed by the protestants. Some of the pieces were plain white and others were decorated by coloring. It was returned for duty at the rates of 55 per cent for the plain and 60 per cent ad valorem for the decorated ware." The importers claim 55 per cent ad valorem as the proper rate applicable to the merchandise under paragraph 95 or 96 of the tariff act of 1897.

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At the hearing in the case a member of the importing firm appeared and testified that the brown coloring matter in the glaze was employed to serve a useful and not ornamental purpose—that is, to hide finger marks and smoke, the articles being designed and intended for use in serving eggs and other food that has been cooked in them.

Although the merchandise is china and not earthenware, we are of opinion that the principles enunciated in G. A. 5336 (T. D. 24424), relative to the second and third classes of goods covered thereby, are controlling in the present case. We accordingly sustain the protest and reverse the collector's decision.

D. Frank Lloyd, assistant United States attorney, for the United States.

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

HAZEL, *District Judge:* The single question here presented is whether certain chinaware, consisting of nappies and round china dishes, was or was not decorated. The collector classified the merchandise as "china, * * * painted, tinted, stained, enameled, printed, gilded, or otherwise decorated or ornamented in any manner," at the rate of 60 per cent ad valorem under paragraph 95. The Board sustained the protest of the importers and held the goods for duty under paragraph 96 at 55 per cent. The proofs given in this court show that, in the year 1897 and prior thereto, the articles were known generally in usage and trade as decorated china. Such being the fact, I am of the opinion that the case of Koscherak *v.* United States (98 Fed. Rep., 596), cited by the importer, is inapplicable. Two witnesses, in behalf of the importer, testified that there was no trade designation in the year 1897; that the chinaware in fact is not decorated, and the brown coloring or stain on the sloping underside of the dish applied solely to its usefulness. Undoubtedly the staining or glazing of the dish tends to conceal smoke and finger marks, but nevertheless I think that under the broad terms of paragraph 95 the articles in question are included, and that they are decorated.

The decision of the Board is therefore reversed.

(T. D. 27858.)

Common carrier.

Approving bond of the New York Central and Hudson River Railroad Company, lessee, for the transportation of unappraised merchandise from Boston, Mass., under the act of June 10, 1880.

TREASURY DEPARTMENT, *January 23, 1907.*

SIR: The bond of the New York Central and Hudson River Railroad Company, lessee of the Boston and Albany Railroad Company, transmitted with your letter of the 18th instant, for the transportation of unappraised merchandise from Boston, Mass., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Boston, Mass., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars running over lines of railroad of the lessor and lessee and such connecting lines and water routes as may be necessary to reach the port of destination named in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(18575.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 27859.)

Printing and publication—Amendment of Circular 17 of 1906.

[Circular No. 5.]

TREASURY DEPARTMENT, *January 23, 1907.*

To officers of the Treasury Department and others concerned:

The first paragraph of Department Circular 17 of February 3, 1906, is modified as follows:

The following are hereby appointed a committee of the Treasury Department, advisory to the Secretary of the Treasury, on the subject of printing and publication: The Assistant Secretary having supervision of printing; the Chief of the Division of Printing and Stationery; and the Editor of Reports and Publications.

LESLIE M. SHAW, *Secretary.*

(T. D. 27860.)

Supervision, assignment, and signing of official matter and conduct of the public business in and under the Treasury Department.

[Circular No. 6.]

TREASURY DEPARTMENT, *January 23, 1907.*

To heads of Bureaus and offices, Treasury Department, and chiefs of divisions, Secretary's Office, Treasury Department:

Hereafter all official communications and matter of any kind or character prepared for signature of the Secretary, which relates to the personnel of any service outside of the District of Columbia under the control of this Department, must be referred or forwarded to the Assistant Secretary in charge of the service, Bureau, office, or division to which the subject-matter contained therein is assigned before the same is sent to the Secretary for signature or action.

Hereafter official communications, other than those making appointments, removals, changes in the personnel of the Department, and modification of methods of conducting business (except those which by law require the signature of the Secretary of the Treasury), will be signed by the Assistant Secretary to whom is assigned the business of the Bureau, office, or division to which the subject-matter relates. The Secretary of the Treasury will sign all letters addressed to the President, the Vice-President, the members of the Cabinet, and to the Congress or its committees, and all regulations and general instructions affecting the public service. Assistant Secretaries are hereby authorized to sign orders and approve vouchers for purchases payable from appropriations for contingent expenses.

The following is the assignment of business to the Assistant Secretaries:

Hon. JAMES B. REYNOLDS, *Assistant Secretary.*—To Assistant Secretary Reynolds is assigned the general direction and supervision

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of all matters pertaining to the Customs Service, and all matters relating to the public business assigned to the following divisions: The Division of Customs and the Division of Special Agents.

Hon. JOHN H. EDWARDS, *Assistant Secretary.*—To Assistant Secretary Edwards is assigned the general direction and supervision of all matters relating to the public business assigned to the following Bureau, offices, and divisions: The Office of the Supervising Architect; the Office of the Chief Clerk and Superintendent; the Office of Internal Revenue; the Bureau of Public Health and Marine-Hospital Service of the United States; the Office of the Life-Saving Service; the Division of Mail and Files, and the Division of Revenue-Cutter Service.

Hon. ARTHUR F. STATTER, *Assistant Secretary.*—To Assistant Secretary Statter is assigned the general direction and supervision of all matters relating to the public business assigned to the following Bureau, office, and divisions: The Office of the Director of the Mint; the Bureau of Engraving and Printing; the Secret-Service Division; the Division of Public Moneys; the Division of Loans and Currency; the Division of Bookkeeping and Warrants, and the Division of Printing and Stationery. All official communications relating to or making appointments, removals, or changes in the compensation of the personnel of the Department and services under its control in the District of Columbia.

LESLIE M. SHAW, *Secretary.*

(T. D. 27861.)

Balloons and airships.

Balloons and airships may be entered in bond for racing purposes.

TREASURY DEPARTMENT, *January 24, 1907.*

SIR: The Department is in receipt of your letter of the 18th instant, further in regard to the entry of airships and balloons imported for the purpose of participation in the Gordon-Bennett international aeronautic cup race to be held during the present year at St. Louis, Mo.

In reply, I have to inform you that such airships and balloons, when imported for the purpose mentioned, may be entered in bond in the same manner as automobiles are permitted to be entered in bond for racing purposes under the provisions of Department Circular 33 of March 15, 1905.

Airships and balloons so entered which may pass into foreign territory during a race may be entered, upon their return, without requiring the giving of a new or additional bond.

Respectfully, JAMES B. REYNOLDS,
(43580.) *Acting Secretary.*

Mr. C. F. BISHOP, *Aero Club of America, New York.*

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(T. D. 27862.)

Information regarding importations and exportations.

Brokers and others not parties in interest not to be furnished names of importers or other confidential information.

TREASURY DEPARTMENT, *January 24, 1907.*

SIR: In reply to your letter of the 15th instant, inquiring whether you should comply with the request of a certain firm of brokers for a list of importers in your district, I have to state that the names of no consignors or consignees, nor other information of a confidential nature regarding importations or exportations, should be furnished to any persons not parties in interest—that is, parties having a direct interest in the transactions, or their attorneys.

Your attention is invited in this connection to T. D. 4352 of December 15, 1879, T. D. 16074 of May 27, 1895, T. D. 16793 of February 27, 1896, and T. D. 21462 of August 3, 1899.

Respectfully, JAMES B. REYNOLDS,
(38986.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Nogales, Ariz.*

(T. D. 27863—G. A. 6523.)

Goods of returning resident.

1. VALIDITY OF TREASURY REGULATIONS.

No regulation made by the Secretary of the Treasury can add to or take from the provisions of a paragraph of the tariff law nor prescribe the evidence by which the facts required by it to exist shall be proven unless authority to make such regulation is expressly given in the paragraph itself.

2. SAME.

A regulation made by the Secretary of the Treasury which provides that "persons who have been abroad two years or more, and who have had during that time a fixed place of abode for one year or more, will be considered as nonresidents within the meaning of this law" (par. 697) is not binding upon this Board or the courts, as this is a question that must be left open to be determined from the evidence in each particular case.

3. SAME.

Held that an American citizen residing in the city of Washington, who had been for four years employed in the service of the United States Government at Manila and temporarily residing there during that period, was entitled upon returning to the United States, under the provisions of paragraph 697, tariff act of 1897, to free admission of $100 in value of certain goods purchased abroad.

United States General Appraisers, New York, January 21, 1907.

In the matter of protest 210565 of George B. Hedges against the assessment of duty by the collector of customs at the port of Port Townsend.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The protestant in this case claims the right of free admission for $100 in value of goods purchased abroad for his own use under the provisions of paragraph 697 of the tariff act of 1897. The collector assessed all the goods at the appropriate

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rates under various provisions of the tariff law. All we have before us is the sworn statement of the protestant and the report of the deputy collector. From the statement of the protestant we learn that he is an American citizen, residing in the city of Washington, D. C.; that for the past four years he had been temporarily residing in Manila, where he held a position under the United States Government. The collector reports that he refused to allow the exemption, because the same was in conflict with article 578 of the Customs Regulations of 1899. This provision reads as follows:

The proviso in paragraph 697 contains special provisions and limitations concerning residents of the United States returning from abroad. The word "residents," as used in this proviso, is held by the Department to include all persons leaving the United States and making a journey abroad, and, during their absence, having no fixed place of abode. Persons who have been abroad two years or more, and who have had during that time a fixed place of abode for one year or more, will be considered as nonresidents within the meaning of this law.

This regulation was probably intended for the guidance of subordinates in the administration of the customs laws. In any event it can not add to or take from the paragraph under which the protestant claims. There is a clear distinction between regulations made by the Secretary of the Treasury under his general authority to administer the customs and those made under special authority expressly given in the paragraph under which the regulations are made. This subject was discussed and the authorities cited in Battellis' case, G. A. 6435 (T. D. 27590). The regulation in question belongs to the former class. This paragraph of the law (697) gives no special authority to the Secretary to make regulations for its administration, nor is free admission under the paragraph made by it subject to such regulations as the Secretary of the Treasury shall make; hence any regulation that is made must be entirely in harmony and conformity with the paragraph and can not in any way modify its scope. The regulation in question therefore does not become a part of and have the force and effect of the law itself, as is the case with regulations made under paragraphs like 638 and 703, where the right of free admission is made subject to such regulations as the Secretary of the Treasury may prescribe

Paragraph 697, as the same has been construed and administered, provides for the admission of $100 in value of articles of a certain character purchased abroad by a returning resident of the United States. The only requisites under this law are that the articles shall answer the description in the paragraph, shall not exceed in value $100, shall accompany the person claiming the exemption, and that that person shall be a returning resident of the United States.

The article of the regulations in question, if construed to apply to a case like the one at bar, would limit the evidence by which the courts should determine whether or not the party claiming the

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exemption was a resident of the United States. This a regulation of the Treasury Department can not do. This is a question that must be left open to be determined from any competent evidence that may be offered. A very short period abroad with a fixed place of abode might, under some circumstances, deprive an American citizen from claiming residence in the United States; whereas, under other circumstances, a residence abroad with a fixed abode for a much longer period might not so deprive him. All this must of necessity be a question left open for the court to determine in each particular case from the evidence before it.

In Knoedler *v.* United States (113 Fed. Rep., 999) it was held that the regulation prescribed by the Secretary of the Treasury that an artist can live abroad only five years with right to have his paintings admitted free of duty under paragraph 703 of the tariff act of 1897, as the product of an American artist residing temporarily abroad, could not be sustained.

In this case there is no testimony in contradiction of the sworn statement of the protestant that he is a resident of the United States, and the fact that he was in Manila holding a position under the United States Government is a circumstance tending to corroborate his claim. The protest, we think, should be and therefore is sustained, and the collector is directed to reliquidate the entry accordingly.

[CONCURRING OPINION.]

SOMERVILLE, *General Appraiser* (concurring): In the case of Knoedler *v.* United States, decided by the circuit court for the southern district of New York (113 Fed. Rep., 999), it was held that the regulation prescribed by the Secretary of the Treasury that an artist can live abroad only five years with the right to have his paintings admitted free of duty under paragraph 703 of the tariff act of 1897, as the product of American artists residing temporarily abroad, could not be sustained. It was there observed by Coxe, *J.*, as follows:

> It can not be successfully contended that the Secretary of the Treasury was justified in making the arbitrary limitation of five years. This being so, it is for the court to determine upon the facts whether the residence abroad is temporary or permanent.

That decision sustained the view of the Board in the case of Knoedler & Co., G. A. 4727 (T. D. 22363). In the latter decision the following language is used:

> As to the meaning of the words, "residing temporarily abroad," we concur in the opinion expressed by the Department that the privelege of free admission accorded by paragraph 703 extends without limitation as to duration of residence abroad, provided that the artists have not renounced or intended to renounce their American citizenship, but avow in the manner prescribed by the regulations their intention of returning to the United States at some later period. Domicile is defined as a residence at a particular place, accompanied by an intention, either positive or presumptive, to remain there permanently or for an indefinite length of time. It embraces not only

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the fact of residence at a place, but the *animus manendi*, or intent to regard and make it the home. And it is well settled that the declarations of a party as to his domicile are admissible to illustrate his intention, and when consistent and in harmony with his conduct are frequently deemed conclusive. Merrill *v.* Morrissett (76 Ala., 432) and authorities there cited.

It is manifest that Congress, in using the words "residing temporarily abroad," intended to use them in the sense interpreted by the courts, and not within some narrow limitation. For these reasons I concur in the conclusion reached by my colleagues.

(T. D. 27864—G. A. 6524.)

Sugar bounty.

1. COUNTERVAILING DUTY—SUGAR—DUTIABLE WEIGHT.

In construing section 5, tariff act of 1897, providing that "upon the importation" of merchandise on which a bounty has been paid by the country of production "there shall be levied an additional duty equal to the net amount of such bounty," *Held*, as to sugar on which a bounty had been allowed at a certain rate per 100 kilograms, that the additional duty should be assessed at such rate upon the basis of the weight of sugar actually imported, without regard to the amount exported on which bounty had been allowed.

2. SAME—"CHANGED IN CONDITION."

Section 5, tariff act of 1897, prescribing the assessment of a countervailing duty on imported merchandise on which a foreign bounty has been allowed, "whether the same * * * has been changed in condition by remanufacture or otherwise," means such remanufacture or other change as brings a bounty-aided product into a classification different from that in which it originally belonged, so that the merchandise may be followed into any article into which it may have been incorporated, and the countervailing duty levied on the importation thereof. Diminution in weight is not such a changed condition as is contemplated.

United States General Appraisers, New York, January 25, 1907.

In the matter of protests 83999 *f*, etc., of the American Sugar Refining Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* These protests take exception to the assessment by the collector of customs of an additional or countervailing duty on certain sugar exported from Germany.

Germany is a country that pays a bounty upon the exportation of sugar of this character, and the countervailing duty of 2.40 marks per 100 kilos was assessed upon the invoice weights of the sugar under the provisions of section 5 of the present tariff act of July 24, 1897. (T. D. 21274.)

The importers claim that this countervailing duty was erroneously assessed upon the invoice or shipping weight of the sugar, and that it should legally have been assessed on the net landed weight of the sugar as reported by the United States weigher.

The action of the collector was in accordance with a decision of a majority opinion of the Board of General Appraisers in the case of

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the Franklin Sugar Refining Company, G. A. 5072 (T. D. 23503). It was held by the Board in that case that the additional or countervailing duty in question should be assessed upon the invoice weights of the sugar, and not upon the landed weight, which would include only the weight of the sugar which arrived in this country. The facts in these particular cases are as follows:

In the case of protest 83999*f*–3956, steamer *Nicolas II*, entry 9988, invoice 11660, the collector assessed countervailing duty on the weight of the sugar shown by the invoice—that is, 4,409,200 pounds. The amount of sugar actually landed is shown by the return of the United States weigher, namely, 4,336,947 pounds. The difference between these two weights is 72,253 pounds.

In the case of protest 84000*f*–4532, steamer *Afghanistan*, entry 7436, invoice 9408, the collector assessed countervailing duty on the invoice weight, namely, 7,050,531 pounds. The weigher found only 6,892,099 pounds. The difference between these two weights is 158,432 pounds.

In the case of protest 84001*f*–4742, steamer *Nubia*, entry 214693, invoice —, the collector assessed countervailing duty on the weight shown by the invoice, namely, 6,613,800 pounds. The weigher found only 6,514,260 pounds. The difference is 99,540 pounds.

The following return by the collector in each of the foregoing protests is undisputed:

As to the claim in the protests that the countervailing duty was erroneously assessed upon the invoice or shipping weight of the sugar, instead of on the net landed weight as returned by the United States weigher, I have to state that section 5, act of July 24, 1897, requires that there should be levied and paid an additional duty equal to the net amount of such bounty or grant. Consequently, as the bounty or grant is predicated by the German Government on the invoiced or shipped weight and not upon the landed weight in the United States, this office rejects such claims and affirms its assessment of duty under G. A. 4787.

The circular under which the collector acted in the collection of the countervailing duty is as follows:

(T. D. 21274.)

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., June 20, 1899.

To officers of the customs and others concerned:

The net amount of the bounty paid by Germany on the export of raw sugar, testing at least 90 per cent, as ascertained and determined under the provisions of section 5 of the act of July 24, 1897, is hereby declared at 2.40 marks per 100 kilograms for the assessment of additional duty under said law.

L. J. GAGE, *Secretary.*

The whole question under consideration is fully discussed in a learned opinion by Mr. Justice Gray, circuit judge of the United States circuit court of appeals, third circuit, which is reported in 142 Federal Reporter (p. 376) and by the Treasury Department in T. D.

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27027. Section 5, tariff act of 1897, was there construed, which provides that upon the importation of merchandise on which a bounty has been paid by the country of production "there shall be levied an additional duty equal to the net amount of such bounty." Held as to sugar on which a bounty has been allowed at a certain rate per 100 kilograms, that an additional duty should be assessed at such rate on the basis of the weight of the sugar actually imported, without regard to the amount exported on which bounty had been allowed.

It was further held that the diminution in weight of the sugar which had taken place *in transitu* is not such a changed condition as that contemplated in said section 5 of the tariff act of 1897.

It was observed as follows by Judge Gray:

We think that the express language of section 5 of the revenue act of July 24, 1897, requires that the additional duty imposed by said act should be measured by the export bounty paid upon the weight of sugar actually imported into this country, as found by the official weigher at the port of Philadelphia, and upon which the regular duties were assessed, and that it is immaterial from what causes the deficiency, if any there be, results.

This decision of the circuit court of appeals reversed the decision of the United States circuit court for the eastern district of Pennsylvania (reported in 137 Fed. Rep., p. 655, and in T. D. 26318), where the majority decision of the Board of General Appraisers was affirmed. The decision of the circuit court of appeals affirms the view taken in the dissenting opinion in said case of the Franklin Sugar Refining Company, G. A. 5072 (T. D. 23503).

Following the decision above cited, the protests are all sustained and the decision of the collector reversed in each instance with instructions to reliquidate the entries on the basis of the landed weight of the sugar, so far as concerns the countervailing duty in question.

(T. D. 27865—G. A. 6525.)

Remanit.

Remanit, an article manufactured from carbonized silk obtained from rags, the silk being wound with metal wire and made into the form of a rope, braid, or mat, is dutiable at the rate of 50 per cent ad valorem under the provisions of paragraph 391, tariff act of 1897, as a manufacture of which silk is the component material of chief value.—Frank *v.* United States (not yet reported; suit 3754; T. D. 27803), affirming 143 Federal Reporter, 702 (T. D. 27005), which affirmed G. A. 5854 (T. D. 25779), cited and followed.

United States General Appraisers, New York, January 25, 1907.

In the matter of protest 151783 of Emil Frank against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

HOWELL, *General Appraiser:* The merchandise in question is a patented article called "remanit." It is made from silk rags, some

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of which may contain an admixture of cotton and wool, the rags being placed in a large drum which is charged with various acids, the purpose being to destroy the cotton and wool by the process known as carbonization. The carbonized silk thus obtained is bound together with metal threads and made into the form of ropes about 1¼ inches thick, or braids about five-eighths of an inch thick, or into mats, as may be desired.

In G. A. 5854 (T. D. 25779) we had occasion to pass upon the question of the classification of this article, and there held that it was dutiable as a manufacture of which silk is the component material of chief value at 50 per cent ad valorem under the provisions of paragraph 391 of the act of July 24, 1897, as assessed in this case.

On appeal, the decision of the Board was affirmed by the circuit court for the southern district of New York in Frank *v.* United States (143 Fed. Rep., 702; T. D. 27005), and the decision of the circuit court has just been affirmed by the circuit court of appeals for the second circuit. (Suit 3754; T. D. 27803.)

Following these decisions the protest claiming the merchandise to be exempt from duty under paragraph 661 or 632, or to be dutiable at 10 per cent ad valorem under paragraph 463, or at 30 per cent ad valorem under paragraph 385, or at 10 per cent or 20 per cent ad valorem under section 6 of said act, is overruled, and the decision of the collector is affirmed.

(T. D. 27866—G. A. 6526.)

Sawdust—Article used in dyeing.

Sawdust produced from a very hard wood and commonly used for dyeing and tanning purposes, is free of duty under paragraph 482, tariff act of 1897, as an article in a crude state used in dyeing or tanning, not specially provided for in said act, and is not dutiable under paragraph 463, as waste not specially provided for.

United States General Appraisers, New York, January 25, 1907.

In the matter of protest 210611 of H. & A. Chapal Frères & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The merchandise consists of 120 packages of sawdust which was returned by the appraiser as not fit for dyeing or tanning, and was assessed for duty at 10 per cent ad valorem under paragraph 463 of the tariff act of 1897 as waste not specially provided for. It is claimed by the importers to be free of duty under paragraph 482 of said act, which reads as follows:

Articles in a crude state used in dyeing or tanning not specially provided for in this Act.

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An identical phrase was used in the enumeration of articles specified as exempt from duty in various earlier tariff acts. (Heyl, p. 1580; tariff act of 1883, pars. 509 and 689; tariff act of 1890, par. 492; tariff act of 1894, par. 386.)

The testimony introduced at the hearing shows that the sawdust in question, which is produced from a hard wood, is used by dyers in connection with the dyeing of skins and furs, such use being described in the following manner:

The sawdust is used in the process of dyeing sealskins. The dye is applied to the hair on the skins; the dye is applied in many coatings, say a dozen or fifteen. After the first application of the dye it is found that the hair has not absorbed all of the dye applied to it, and in order that the second application may have a good effect, it is necessary to remove all of the dye which has not been absorbed, or all of the first coating of the dye which has not been absorbed, because the final dyeing is produced by the application of many coatings, each of which is different. After the application of the first coating, the skins are put in a revolving drum with a quantity of this sawdust. The sawdust has the effect by friction of removing all of this dyestuff which has not been absorbed by the hair. The skins are then taken out of the drum and the second coating in the dyeing process is then applied. The skins are then put back into the drum with a second quantity of sawdust, which removes the unnecessary part of the second application of the dyestuff—that is to say, the part which has not been absorbed by the hair. The skins then get the third, fourth, and other coatings necessary to make them dyed skins, and between the application of each coating and the succeeding one the sawdust is applied to them in the drum.

Sawdust is an article not specially provided for in the tariff act, and the question to be decided is whether the particular article under consideration is used in dyeing or tanning within the meaning of said paragraph 482. In a series of litigated cases the Supreme Court of the United States has passed upon the meaning of the phrase "trimmings," and so forth, "*used for* making or ornamenting hats, bonnets and hoods," composed of certain materials enumerated in paragraph 448 of the tariff act of March 3, 1883. These cases are all reviewed by Mr. Justice Shiras in the case of Meyer *v.* Cadwalader (89 Fed. Rep., 963; 32 C. C. A., 456), where it was held that the chief or predominant use would govern the classification of these articles, as distinguished from that which is merely occasional when used for other purposes than trimming hats.

The case of Magone *v.* Heller (150 U. S., 70; 14 Supt. Ct. Rep., 18), construing the expression "manure and all substances *expressly used* for manure," found in the free list of the tariff act of 1883, went off on the use of the phrase "expressly used." The phrase in question was construed, however, to include not only all substances expressly used as manure, but also substances expressly used either by themselves or in combination with other materials in making manure, and the fact that such substances may have been used occasionally or by way of experiment for a different purpose, would not take it out of the exemption.

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The case of United States *v.* Wells (77 Fed. Rep., 411; 23 C. C. A., 210), construed paragraph 599 of the tariff act of October 1, 1890, which enumerates "grease and oils such as are *commonly used* in soap making, wire drawing, or for stuffing or dressing leather, and which are *fit only* for such use, not specially provided for in this Act."

The case of United States *v.* Nichols, decided by the circuit court for the district of Massachusetts and reported in 46 Federal Reporter (p. 359) would seem to be more nearly in point. Paragraph 696 of the tariff act of 1883 (Rev. Stat., sec. 2513) provided in the free list for "felt, adhesive, for sheathing vessels." It was held that the clause in question could be construed as if it read "adhesive felt such as is now used for sheathing vessels," and the fact that the article could be used for some other purpose than sheathing vessels afforded no ground for taking it out of the free list and making it dutiable.

It was long ago held by the Treasury Department (T. D. 4899, July 17, 1881) that sawdust, when imported and used for dyeing or tanning purposes, was free under the tariff act existing at that time, which, as we have said, was in the phraseology of the section under consideration. In any event it appears from the testimony, so far as we can infer, that the sawdust covered by this invoice, which is made of a peculiarly hard wood, is in a crude state and is commonly used in dyeing, and the fact that it is used in connection with other ingredients would not affect its classification.

The protest is sustained and the collector's decision reversed, with instructions to reliquidate the entry accordingly.

(T. D. 27867—G. A. 6527.)

Toys—Clown sets, etc.

Garments composed in part of cotton or wool, attached to cardboards and belonging to a class of articles such as uniforms for soldiers, policemen, etc., and the loose-fitting gowns such as are usually worn by clowns, their size limiting their use to children of less than 12 years of age, are dutiable at 35 per cent ad valorem as toys, under paragraph 418, tariff act of 1897, and not at the rates applicable under paragraphs 314 and 370, respectively, to wearing apparel composed wholly or in part of cotton or wool.—United States *v.* Schwarz (T. D. 27773), affirming G. A. 5770 (T. D. 25532), followed.

United States General Appraisers, New York, January 25, 1907.

In the matter of protests 159029, etc., of G. A. Schwarz against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* These protests are directed against the assessment of duty at the respective rates provided in

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paragraphs 314 and 370 of the present tariff act for cotton and woolen wearing apparel, on a class of articles such as the loose-fitting gowns usually worn by clowns, or uniforms for soldiers, policemen, etc. They are customarily attached to card boards and are designed for the amusement of children in play and are known in trade as toys. The appraiser reports that they are suitable for use as masquerade costumes for children, but we find they are so flimsily constructed as to have no general use other than as playthings for children.

In G. A. 5770 (T. D. 25532) this Board held similar articles to be dutiable as toys, which decision on appeal to the circuit court for the eastern district of Pennsylvania in United States *v.* Schwarz was affirmed (suit 1648; T. D. 27773); on the authority of which affirmance we sustain the claim of the importers that the merchandise now before us marked "G. A. S." on the invoices for identification is toys, and, as such, dutiable at 35 per cent ad valorem under paragraph 418, the collector's decision in each case being reversed to the extent indicated.

(T. D. 27868—G. A. 6528.)

Wearing apparel—Elastic belts, beaded.

Elastic belts ornamented with glass beads, silk largely the component material of chief value therein, *Held* to be wearing apparel and to be dutiable at 60 per cent ad valorem under paragraph 408, tariff act of 1897, and not as manufactures in chief value of silk at 50 per cent ad valorem under paragraph 391.—Steinhardt *v.* United States (141 Fed. Rep., 494; T. D. 26740) cited.

United States General Appraisers, New York January 25, 1907.

In the matter of protest 221955 of Chas. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* This protest relates to the proper classification for duty of three cases of elastic belts ornamented with glass beads. Silk is largely the component material of chief value in these articles, hence the importers' alternative claim that they are dutiable at 50 per cent ad valorem under paragraph 391, and not, as returned by the collector, at 60 per cent ad valorem under paragraph 408 of the tariff act of 1897.

In the case of Steinhardt *v.* United States (141 Fed. Rep., 494; T. D. 26740), the circuit court of appeals for the second circuit held that garters were wearing apparel. Belts, like suspenders and braces, are analogous to garters, and we find the merchandise in dispute is wearing apparel, and hold that, without regard to the relative value

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of the beads and other materials entering into the fabrication thereof, it is more specifically provided for in paragraph 408 than elsewhere in the tariff act of 1897.

The protest is accordingly overruled and the collector's decision is affirmed.

(T. D. 27869—G. A. 6529.)

Granite monuments—Articles composed of mineral substances.

Granite imported in sections, dressed and polished ready to be erected as monuments, is specially provided for in paragraph 118, tariff act of 1897, as "granite * * * hewn, dressed or polished," and is not dutiable as "articles composed of earthy or mineral substances" under the provisions of paragraph 97 of said act.—G. A. 6026 (T. D. 26334), Baldwin *v.* United States (144 Fed. Rep., 702; T D. 27066), and T. D. 27802 followed.

United States General Appraisers, New York, January 28, 1907.

In the matter of protests 164549, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* These protests cover merchandise returned by the appraiser as "dressed and polished granite." Duty was assessed thereon at the rate of 50 per cent ad valorem under the provisions of paragraph 118 of the tariff act of 1897. Protestants claim duty should have been assessed at the rate of 35 per cent or 45 per cent ad valorem under the provisions of paragraph 97, or at 20 per cent ad valorem under section 6, or, by assimilation or material of chief value, under the provisions of section 7 of said act.

The issue presented here is similar to that which was considered and determined by the Board in G. A. 6026 (T. D. 26334) adversely to the contentions of protestants. That decision on appeal to the United States circuit court for the southern district of New York (Baldwin *v.* United States, suit 4013) was affirmed (144 Fed. Rep., 702; T. D. 27066). A further appeal was taken by protestants from said court decision to the United States court of appeals, second circuit, and the decision of the circuit court was affirmed (T. D. 27802).

These protests have been suspended awaiting the determination of the question by the courts, the result of which, as indicated, has been an affirmance of the Board's decision; and it appearing that the merchandise here involved is similar to that already passed upon adversely to the contentions of protestants, the protests are overruled and the decision of the collector is affirmed in each case.

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(T. D. 27870—G. A. 6530.)

Decorated China vases, bronze mounted.

Decorated china vases fitted with bronze mountings are dutiable at 60 per cent ad valorem under paragraph 95, tariff act of 1897, and not at 45 per cent ad valorem under paragraph 193 as articles composed wholly or in part of metal, regardless of the respective values of either component material.—Gallenkamp *v.* Rachman (147 Fed. Rep., 769; T. D. 27090), reversing G. A. 5922 (T. D. 26034), followed.

United States General Appraisers, New York, January 28, 1907.

In the matter of protest 44498 *b* of J. J Buchey & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The protestants in this case claim that certain china vases ornamented with bronze mountings are dutiable at 45 per cent ad valorem under paragraph 193 as articles composed wholly or in part of metal.

The appraiser reports that decorated china is largely the component material of chief value in the vases, and that they were properly returnable for duty by the collector at 60 per cent ad valorem under paragraph 95 of the present tariff act.

In G. A. 5922 (T. D. 26034) this Board held that certain glass vases ornamented with bronzed copper fixed in place by a mechanical operation, the metal being of more value than the glass, were dutiable at 45 per cent ad valorem under paragraph 193. Upon review, however, the circuit court for the eastern district of Missouri reversed the Board in Gallenkamp *v.* Rachman (147 Fed. Rep., 769; T. D. 27090). Judge Finkelnburg, in his decision, said:

It is my opinion from the facts presented by the record and from an inspection of the exhibit that the article in controversy is essentially a vessel composed wholly of glass; that it is complete for use as a glass vessel, an article which would serve its entire purpose without any metal attachment, and that the metal work surrounding its lower part is intended not for use but for ornament, and that, as such, it falls under the first clause of paragraph 100. Paragraph 193 in its terms applies only to articles or wares not otherwise specially provided for, and hence does not apply to articles or wares which are covered by paragraph 100. If the article in question comes under the first clause of paragraph 100, as I think it does, then, in my opinion, the question whether the glass or metal decoration is of greater value becomes immaterial.

A comparison of paragraph 100 with paragraphs 95 and 96 will, we think, show conclusively that the reasoning of the learned judge in the case cited with regard to bronze-mounted glass vases applies with equal force to bronze-mounted china vases. The first clause of paragraph 100 would seem to apply only to articles composed wholly of glass, to which extent it corresponds with the provision of paragraph 95 with regard to chinaware, which has been held to include only articles made wholly of china, procelain, parian, bisque, earthen, stone, and crockery ware. The second clause of paragraph 100 relates to articles composed in chief value of glass in combination with

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other materials, just as paragraph 96 provides for combination articles of which china, procelain, parian, bisque, earthen, or stone ware is the component material of chief value.

Vases are provided for *eo nomine* in paragraph 95. They are not provided for by name in paragraph 100. Neither paragraph 95 nor 100 contains the phrase "not specially provided for." The vases in the case of Gallenkamp *v.* Rachman (*supra*) were ornamented with detachable metal scroll work, just as the vases in the present case are ornamented. In both cases the merchandise is vases—complete articles in themselves—and we fail to see, if the decision of the court in the Rachman case was correct, why the vases in the present case are not dutiable under paragraph 95 as decorated earthenware, regardless of the respective value of either component material.

We accordingly overrule the protest and affirm the collector's decision with regard to the vases.

Concerning the clasps, also covered by protest, marked for identification "T. S. S.", we find they are not commonly known as jewelry, and sustain the protest claiming 45 per cent duty thereon under paragraph 193, to which extent only the collector's decision is reversed.

(T. D. 27871—G. A. 6531.)

Brandy in packages.

WHAT CONSTITUTES A PACKAGE UNDER PARAGRAPH 296, TARIFF ACT OF 1897.

Four cases of French brandy, each containing 6 quart bottles, all tied together in one package by a strap, making 24 quart bottles inclosed in one strap, constitute a package of bottles within the meaning of paragraph 296 of the present tariff act of 1897, and are properly packed so as to evade any punitive or additional duties under said paragraph. Such merchandise is dutiable according to the number of gallons contained in the package.

United States General Appraisers, New York, January 29, 1907.

In the matter of protest 196538 of Geo. Wm. Rueff against the assessment of duty by the collector of customs at the port of New Orleans.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The item on the invoice to which the protest relates is marked 296/299, 4 cases, each consisting of 6 quart bottles of brandy, exported from France. The appraiser returned the merchandise as follows: "French brandy, 4 cases per strap, 6 bottles per case (containing 2$\frac{11}{32}$ gallons per dozen bottles) dutiable at $1.75 per gallon." The merchandise thus appears to be 4 cases, each containing 6 quart bottles of brandy, all put in one package held together by a strap, making 24 quart bottles inclosed by the strap.

From the testimony it would appear that this strap consisted of a sheet iron band about 1 inch in width. The importers in their protest claim that this package of bottles is securely fastened together

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so as to form a merchantable package containing 24 quart bottles, packed in compliance with paragraph 296 of the present tariff act of 1897, and that duty should have been assessed only upon the actual quantity of the brandy measured in gallons, and not upon 4 dozen, or 48 bottles, as charged.

Paragraph 296 of the present tariff act of 1897 enumerates, among other things, the following:

Wines, cordials, brandy, and other spirituous liquors, including bitters of all kinds, and bay rum or bay water, imported in bottles or jugs, shall be packed in packages containing not less than one dozen bottles or jugs in each package, or duty shall be paid as if such package contained at least one dozen bottles or jugs, and in addition thereto, duty shall be collected on the bottles or jugs at the rates which would be chargeable thereon if imported empty.

A similar provision has been long contained in our various tariff acts. Bensusan *v.* Murphy (10 Blatch., 530). The purpose of this statute would seem to be to facilitate customs officers in handling and examining liquors of this kind, in estimating quantities and qualities, and properly classifying them.

A package is defined by the Standard Dictionary, among other definitions, as "an article or a quantity of anything wrapped up or bound together; a bale, bundle, packet, or parcel." It was held many years ago by the Board that bottles of wine similarly strapped together with wooden straps were properly packed so as to constitute packages within the meaning of said paragraph 296 of the act of 1897, and this decision was acquiesced in by the Department in T. D. 21202. In our judgment, the articles were properly packed so as to evade any punitive or additional duties other than those claimed by the importer.

The protest is sustained and the collector's decision is reversed, with instructions to reliquidate the entry accordingly.

(T. D. 27872—G. A. 6532.)

Product of petroleum.

BURDEN OF PROOF AS TO COUNTRY OF ORIGIN.

Where an importer, by protest, challenges the correctness of the rate or amount of duty levied by the collector upon a product of petroleum, which rate or amount is controlled, under the proviso to paragraph 626, tariff act of 1897, by the duty imposed by the country of production upon a like commodity exported thereto from the United States, the burden of proving in what country said commodity was produced is upon the importer

United States General Appraisers, New York, January 29, 1907.

In the matter of protest 167404 of Middleton & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The commodity covered by this protest was returned by the appraiser as paraffin wax, and a countervailing

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duty, equal to that imposed by Italy upon like products exported to that country from the United States, levied thereon. It is contended in the protest that the commodity in question is not subject to a countervailing duty, and, if subject to a countervailing duty, is dutiable at a less rate than that imposed by the collector. The collector in his letter transmitting the protest states that the merchandise in question was imported from Turks Islands, West Indies, and was returned by the appraiser as paraffin wax, country of origin unknown. He further states that, as there was no consular certificate or shipper's oath or declaration showing the country of origin of the crude petroleum from which the wax was manufactured, he assessed a duty equal to the highest duty imposed by any country on petroleum products from the United States, which is 48 lire per quintal imposed by Italy.

There is filed with the papers a statement certified to before the American consul that three packages of paraffin shipped to New York by American steamship *New York* were found derelict on or near Turks Islands. Insomuch as the merchandise in question came upon the steamship *Cherokee*, this certificate utterly fails to identify the derelict packages therein certified to as the merchandise covered by this protest.

We know of no authority for assessing the Italian duty upon this merchandise, but to reverse this action of the collector makes it incumbent upon the Board to point out what, if any, duty should be assessed, and in order to do this it is necessary for us to determine in what country the paraffin was produced.

Under the proviso to paragraph 626 of the tariff act of 1897, as the same has been finally construed by the courts, any product of crude petroleum *produced in any country* which imposes a duty upon petroleum or its products exported thereto from the United States must pay a duty equal to the duty imposed upon that product in the country where it was produced. Bergeresch's case, G. A. 6405 (T. D. 27507), following United States *v.* Downing (146 Fed. Rep., 56; T. D. 27025).

Knowledge as to the country in which petroleum or a product of petroleum is produced is presumably in the possession of the importer. In any event, proof of this fact could be far more readily produced by him than by the Government. The burden, therefore, of showing by competent testimony the country in which the paraffin in question was produced was upon the importer, and in this he has entirely failed, insomuch as no testimony has been offered touching upon this point. The protest is therefore overruled without affirming the action of the collector.

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(T. D. 27873.)

Abstracts of decisions of the Board of General Appraisers.

No. 14121.—HAT BODIES.—Protest 223885 of Hunken, Neale & Forbes against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 22, 1907. Opinion by Lunt, G. A.

The goods were held to have been properly classified as fur hat bodies under paragraph 432, tariff act of 1897, relating to hat bodies.

No. 14122.—CHLORAL HYDRATE.—Protest 223736 of Emil Levi against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 22, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 5567 (T. D. 24970), relating to chloral hydrate.

No. 14123.—FISHHOOKS.—Protests 202870, etc., of H. A. Whittemore & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 22, 1907. Opinion by Fischer, G. A.

Protests sustained in part on the authority of G. A. 6494 (T. D. 27764), relating to fishhooks.

No. 14124.—FISHHOOKS.—Protests 171266, etc., of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14123 (*supra*).

No. 14125.—SILK ORNAMENTS.—Protests 120528, etc., of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 22, 1907. Opinion by Fischer, G. A.

The Board held a portion of the goods to have been improperly classified as trimmings and to consist of ornaments dutiable under paragraphs 391 and 322, tariff act of 1897, as manufactures of silk and of cotton, respectively.

No. 14126.—IMITATION HORSEHAIR BRAIDS.—Protest 192776 of American Express Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; Howell, G. A., absent), January 22, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6491 (T. D. 27761), relating to imitation horsehair braids.

No. 14127.—SILK BRAIDS.—Protest 133649 of G. F. A. Bondies against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 22, 1907. Opinion by Howell, G. A.

The merchandise was found to have been classified under an inapplicable subdivision of paragraph 387, tariff act of 1897, relating to silk fabrics. Assessment corrected accordingly.

No. 14128.—FIGURED COTTON CLOTH.—Protests 218093, etc., of R. H. Macy & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). January 22, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

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No. 14129.—BAR-LE-DUC JELLY.—Protests 219301, etc., of La Manna, Azema & Farnan *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of G. A. 5167 (T. D. 23848), Abstract 12170 (T. D. 27493), and Abstract 12763 (T. D. 27591), relating to bar-le-duc jelly.

No. 14130.—BRONZE STATUARY.—Protest 209134 of R. J. Godwin's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Waite, G. A.

Protest sustained as to a portion of the importation on the authority of G. A. 6346 (T. D. 27302), relating to bronze statuary.

No. 14131.—GAUGE OF OLIVES.—Protests 199582, etc., of F. Romeo & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Ceballos *v.* United States (146 Fed. Rep., 380; T. D. 27264), relating to gauge of olives.

No. 14132.—RIPE OLIVES.—Protests 197616, etc., of E. D. Papavasilopulo *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., dissenting), January 22, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of G. A. 6505 (T. D. 27793), relating to ripe olives.

No. 14133.—JUTE BAGGING.—Protest 220794 of D. Ullman Sons against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 5418 (T. D. 24664), relating to jute bagging.

No. 14134.—CONSIGNED GOODS.—Protest 215191 of L. A. Denechaud against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 6135 (T. D. 26667), relating to consigned goods.

No. 14135.—GOODS IMPORTED BY MAIL.—Protest 214364 of Charles Fried against the assessment of duty by the collector of customs at the port of Bangor. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

The protest related to goods imported by mail, and was dismissed for want of jurisdiction on the ground that "it is not made to appear that the parcels-post convention between the United States and Canada authorizes the importation through the mails of the merchandise in question." Note G. A. 2761 (T. D. 15327), G. A. 5211 (T. D. 24014), and G. A. 6132 (T. D. 26664).

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No. 14136.—Old Grain Bags.—Protests 212332, etc., of Kerr, Gifford & Co. against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

The protests related to old grain bags, claimed to be free of duty either under paragraph 632, tariff act of 1897, as paper stock, or under paragraph 483 as American goods returned. Protests overruled.

No. 14137.—Shortage.—Protest 204623 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

The importers contended that an allowance should be made for shortage of 302 pounds of paraphenetidin. Protest sustained.

No. 14138.—Goods in Excess.—Protest 211753 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Somerville, G. A.

One case in the importation was found to contain a greater quantity of goods than was called for by the invoice, and this excess was erroneously attributed to two other cases. The Board sustained the importers' contention that on these latter cases no duty should have been assessed on goods in excess.

No. 14139.—Personal Effects.—Protests 195792, etc., of A. C. Bernays *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent), January 22, 1907. Opinion by Hay, G. A.

The importers contended that the articles in controversy should have been admitted free of duty under paragraph 697, tariff act of 1897, as personal effects of returning residents of the United States. Protests overruled.

No. 14140.—Protest Unsupported.—Protest 204226 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 22, 1907. Opinion by Waite, G. A.

Protest overruled for want of merit.

No. 14141.—Protest Unsupported.—Protest 194127 of K. Hirade against the assessment of duty by the collector of customs at the port of Port Townsend.

Same as No. 14140 (*supra*).

No. 14142.—Protest Unsupported.—Protest 222182 of Cusenier Company. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by Lunt, G. A.

Same as No. 14140 (*supra*).

No. 14143.—Protests Unsupported.—Protests 211387, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by Fischer, G. A.

Same as No. 14140 (*supra*).

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No. 14144.—Radium Bromid.—Protest 222153 of American Express Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 23, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of Abstract 13630 (T. D. 27745), relating to radium bromid.

No. 14145.—Heliotropin.—Protest 172767 of P. R. Dreyer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 23, 1907. Opinion by Lunt, G. A.

Heliotropin, classified as a chemical compound under parapraph 3, tariff act of 1897, was claimed to be free of duty under paragraph 626, relating to enfleurage grease, etc. Protest overruled.

No. 14146.—Reel Stock.—Protest 219708 of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 23, 1907. Opinion by McClelland, G. A.

G. A. 6485 (T. D. 27741) followed, relating to reel stock.

No. 14147.—Molders' Patterns.—Protest 199968 of Sultan Motor Company against the assessment of duty by the surveyor of customs at the port of Springfield. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 23, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

No. 14148.—Molders' Patterns.—Protests 149887, etc., of G. H. P. Todd *et al.* against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 14147 (*supra*).

No. 14149.—Protests Insufficient.—Protests 218274, etc., of J. H. Rowe Company *et al.* against the assessment of duty by the collector of customs at the port of Gloucester. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; Howell, G. A., absent), January 23, 1907. Opinion by Fischer, G. A.

The protests were held insufficient on the authority of Abstract 13931 (T. D. 27801).

No. 14150.—Metal-Thread Goods.—Protests 198095, etc., of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; Howell, G. A., absent), January 23, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6496 (T. D. 27760), relating to metal-thread goods.

No. 14151.—Flax Articles.—Protest 211581 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 23, 1907. Opinion by De Vries, G. A.

A portion of the goods was held dutiable as flax articles weighing less than 4½ ounces per square yard under paragraph 346, tariff act of 1897, as claimed by the importers.

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No. 14152.—MANUFACTURES OF MARBLE.—Protest 219906-22968 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 23, 1907. Opinion by Waite, G. A.

The protest related to a fountain and seats composed of marble. On the authority of G. A. 5462 (T. D. 24758) and G. A. 6346 (T. D. 27302) the Board held these articles were not statuary within the meaning of the tariff.

No. 14153.—BAS-RELIEF—STATUARY.—Protest 195614 of Mrs. J. P. Boogher against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 23, 1907. Opinion by Waite, G. A.

On the authority of G. A. 5225 (T. D. 24048) the Board held that a bas-relief was not statuary as defined in the tariff.

No. 14154.—CHINESE BACON.—Protests 186307, etc., of Man Wo & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 23, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of G. A. 6241 (T. D. 26935), relating to Chinese bacon and ham.

No. 14155.—NECTARINES—PEACHES.—Protest 212768 of Sgobel & Day against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 23, 1907. Opinion by Waite, G. A.

The Board held nectarines to have been properly classified as peaches under paragraph 262, tariff act of 1897.

No. 14156.—POKER CHIPS.—Protests 212052, etc., of Swayne, Hoyt & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 23, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of Abstract 13714 (T. D. 27765), referring to poker chips.

No. 14157.—PROTEST ABANDONED.—Protest 220091-23009 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 23, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

No. 14158.—PROTEST ABANDONED.—Protest 175544 of A. G. Elliot & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14157 (*supra*).

No. 14159.—PROTESTS ABANDONED.—Protests 11521 *h*, etc., of McGibbon & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same as No. 14157 (*supra*).

No. 14160.—PROTESTS ABANDONED.—Protests 220090-23008, etc., of Theo. Ascher Company. Opinion by Howell, G. A.

Same as No. 14157 (*supra*).

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No. 14161.—PROTEST ABANDONED.—Protest 220433 of Gimbel Brothers against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Howell, G. A.

Same as No. 14157 (*supra.*)

No. 14162.—PROTESTS ABANDONED.—Protests 218607, etc., of G. Collamore & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Same as No. 14157 (*supra*).

No. 14163.—PROTEST ABANDONED.—Protest 216532–22956 of Atwood & Steele Company. Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Same as No. 14157 (*supra*).

No. 14164.—PROTESTS UNSUPPORTED.—Protest 211761 of Japan Import and Export Commission Company, protests 224569, etc., of Nickelsburg Brothers & Co., protest 217974 of Reiss & Brady, and protest 224015 of Schild Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 23, 1907. Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 14165.—PROTEST UNSUPPORTED.—Protest 228898 of Morris European and American Express Company. Opinion by Lunt, G. A.

Same as No. 14164 (*supra*).

No. 14166.—PROTESTS UNSUPPORTED.—Protest 218605 of Campbell, Metzger & Jacobson and protest 219776 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 23, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 14167.—PROTEST UNSUPPORTED.—Protest 228498 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Phila delphia.

Same as No. 14166 (*supra*).

No. 14168.—PROTEST UNSUPPORTED.—Protest 220136 of Packard Motor Car Company against the assessment of duty by the collector of customs at the port of Detroit. Opinion by Fischer, G. A.

Same as No. 14166 (*supra.*)

No. 14169.—PROTESTS UNSUPPORTED.—Protest 195065 of Austin, Baldwin & Co. and protest 199597 of F. B. Vandegrift & Co. January 23, 1907.

Same as No. 14140 (*supra*).

No. 14170.—PROTEST UNSUPPORTED.—Protest 195794 of Strauss-Samish Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. January 23, 1907. Opinion by Somerville, G. A

Same as No. 14140 (*supra*).

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No. 14171.—GELATIN SPANGLES.—Protests 177152, etc., of Veit, Son & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 25, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of 141 Federal Reporter, 380 (T. D. 26400), relating to gelatin spangles.

No. 14172.—PINS.—Protest 212627 of Kraemer & Foster against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 25, 1907. Opinion by Sharretts, G. A.

G. A. 6376 (T. D. 27390) followed, relating to pins.

No. 14173.—PINS—ORNAMENTS—JEWELRY.—Protests 217894, etc., of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), January 25, 1907. Opinion by Sharretts, G. A.

Protests sustained as to a portion of the merchandise, consisting of pins and ornaments, which were held dutiable as manufactures of the component material of chief value, as claimed by the importers, on the authority of G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), and G. A. 6383 (T. D. 27423). Other articles consisting of combs highly ornamented, of gilt collars set with imitation precious stones, of hat pins with ornamental heads, and of necklaces, were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14174.—MOLDERS' PATTERNS.—Protests 155303, etc., of G. E. Cochlan *et al.* against the assessment of duty by the collector of customs at the port of Port Huron. January 25, 1907.

Same as No. 14147 (*supra*).

No. 14175.—PICTORIAL POST CARDS.—Protests 209129, etc., of Hensel, Bruckmann & Lorbacher *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries. General Appraisers), January 25, 1907. Opinion by Fischer, G. A.

The protests related to pictorial post cards, which were held to have been properly classified as printed matter under paragraph 403, tariff act of 1897.

No. 14176.—NICKEL WIRE.—Protest 219342 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 25, 1907. Opinion by Fischer, G. A.

Nickel wire was held to have been properly classified under the provision in paragraph 137, tariff act of 1897, for wire not specially provided for.

No. 14177.—GRAMOPHONE POINTS.—Protest 211375 of John Dunn, jr., against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 25, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6215 (T. D. 26872), relating to gramophone points.

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No. 14178.—ANATOMICAL MANIKINS.—Protest 223209 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 25, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 12840 (T. D. 27602), relating to anatomical manikins.

No. 14179.—FEATHERSTITCH BRAIDS.—Protests 89960*f*, etc., of Leopold Baruch against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 25, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14180.—STATUARY.—Protest 210925 of W. H. Way against the assessment of duty by the collector of customs at the port of Savannah. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Waite, G. A.

On the authority of G. A. 5501 (T. D. 24822), a female figure in marble holding a shell, the article being valued at $79, was held dutiable as statuary under paragraph 454, tariff act of 1897.

No. 14181.—WOOD PULP—COUNTERVAILING DUTY.—Protests 58762*b*, etc., of James Davy *et al.* against the assessment of duty by the collector of customs at the port of Niagara Falls. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Somerville, G. A.

The protests were sustained on the authority of Myers *v.* United States (144 Fed. Rep., 1021; T. D. 27332), relating to the assessment of countervailing duty on wood pulp.

No. 14182.—FUR WASTE—MANURE.—Protest 211294 of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Plattsburg. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907.

The article in controversy was classified under paragraph 463, tariff act of 1897, as waste, and was claimed to be free of duty under paragraph 569 relating to "guano, manures, and all other substances used only for manure." Protest sustained. G. A. 5604 (T. D. 25085) followed.

SOMERVILLE, *General Appraiser:* * * * From an examination of the official samples the merchandise appears to consist of small pieces of animal skins with the hair on, measuring on the average about 6 by 4 inches, and representing the cuttings left over in the trimming of furs. The testimony introduced at the hearing satisfactorily shows that these scraps of skins are used only for the manufacture of manure by mixing with other ingredients.

No. 14183.—SUGAR—POLARISCOPIC TEST.—Protest 212164 of Franklin Sugar Refining Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Somerville, G. A.

The importers contended that the polariscopic test made by the Government officers was inaccurate. Protest overruled.

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No. 14184.—PERSONAL EFFECTS.—Protest 216447 of Theo. H. Diener & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Somerville, G. A.

Certain books were held free of duty under paragraph 697, tariff act of 1897, as personal effects. They had been treated as dutiable for the reason that, at the time of the entry, no claim was made for exemptions from duty and no oath was filed. The necessary oath was filed later.

No. 14185.—PROTEST ON RELIQUIDATION—PROTEST ON POINT NOT SPECIFICALLY COVERED BY BOARD DECISION.—Protest 204737 of La Manna, Azema & Farnan against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907.

The importations covered by this protest were the subject of a former decision of the Board, and consisted of goods in bottles, with respect to which the importers made two contentions, one relating to the contents of the bottles and one to the bottles themselves.

SOMERVILLE, *General Appraiser:* * * * The Board sustained the protest as to the first claim, and held that the cherries in question were dutiable at 20 per cent ad valorem. This decision must be taken impliedly as overruling all other claims made in the same protest. The collector reliquidated the entries in accordance with the decision of the Board, but declined to admit the bottles in question as free. The importers now seek to challenge the correctness of the collector's decision and to relitigate their case before the Board a second time as to the bottles.

We are of opinion, as often decided, that an importer can not a second time successfully challenge the same decision, and if his protest against the first liquidation has been overruled by the Board, directly or indirectly, he must seek his remedy by application to the courts pursuant to section 15 of the customs administrative act. Similar questions have been passed on by the courts in numerous decisions. *In re* Pustet, G. A. 6050 (T. D. 26385), *In re* Downing, G. A. 6408 (T. D. 27538), and *In re* Wetstein, G. A. 6200 (T. D. 26848), also Stern *v.* United States (77 Fed. Rep., 607) and other decisions cited in Pustet's case (*supra*). We think that the collector properly followed the Board's decision, and that he would not have been justified in going outside of the questions decided by the Board. The remedy of the importers was by appeal to the circuit court. The protest is, therefore, dismissed.

No. 14186.—HIDES—SHRINKAGE.—Protest 219729-22504 of Bolles & Rogers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 6247 (T. D. 26956), relating to the shrinkage of hides.

No. 14187.—SHORTAGE.—Protest 216743 of Marcel Schmitt against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Hay, G. A.

The Board sustained the importer's contention that an allowance should have been made for a shortage of 30 dozen artificial flowers.

No. 14188.—GAS RETORT CARBON.—Protest 224547 of Thos. Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907.

The protest related to ground gas retort carbon in the form of a black powder of very small grains. It was classified under the provision in paragraph 97, tariff act of

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1897, for earthy or mineral substances or carbon not decorated, and was claimed to be dutiable under paragraph 415 as coke.

HAY, *General Appraiser:* * * In Earle's case, G. A. 5513 (T. D. 24847), this Board held that gas retort carbon, which was described as the residuum or waste material that accumulates on the inside of gas retorts when gas is made by the burning of bituminous coal, was dutiable as coke; but the commodity before the Board at that time was large pieces of this carbon as the same is broken and removed from gas retorts; and the testimony showed that one of the principal uses of that commodity was for fuel, just as coke is used.

In Robinson's case, G. A. 6195 (T. D. 26887), a commodity very similar to that here under consideration was held by the Board to be dutiable under paragraph 97, and although a reading of that paragraph would rather indicate that it was intended to cover commodities very different from the merchandise in this case, we would feel, under the somewhat doubtful conditions that exist, constrained to follow G. A. 6195 (*supra*) were it not for the fact that the Supreme Court in United States *v.* Downing (201 U. S., 354; T. D. 27281) has held that paragraph 97 covers only such articles of carbon as are susceptible of decoration. However, we do not feel able to hold that the commodity before us is dutiable as coke, and that is the only claim made in the protest. The protest is overruled without affirming the action of the collector.

No. 14189.—GLUE STOCK—EXTRACT OF FISH.—Protest 214469 of Russia Cement Company against the assessment of duty by the collector of customs at the port of Gloucester. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinion by Hay, G. A.

The commodity in question was extracted from the heads, bones, or skins of fish, enough preservative being put into it to keep it until it is manufactured into glue. Under authority of G. A. 6140 (T. D. 26680) the Board held it free of duty under paragraph 572, tariff act of 1897, as glue stock.

No. 14190.—PROTESTS ABANDONED.—Protests 213924, etc., of I. Lefkowitz *et al.* against the assessment of duty by the collector of customs at the port of New York. January 25, 1907. Opinion by Howell, G. A.

Same as No. 14157 (*supra*).

No. 14191.—PROTESTS ABANDONED.—Protests 166265, etc., of J. W. Thorn Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907.

Protests abandoned; overruled.

No. 14192.—PROTESTS UNSUPPORTED.—Protests 220656, etc., of Guthman, Solomons & Co., protest 221247 of Reiling, David & Schoen, and protest 219178 of J. & H. Rosenberg against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 25, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14193.—PROTEST UNSUPPORTED.—Protest 225699 of Kohn, Adler & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14192 (*supra*).

No. 14194.—PROTEST UNSUPPORTED.—Protest 219859 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14192 (*supra*).

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No. 14195.—PROTEST UNSUPPORTED.—Protest 169849 of John Menke & Co. Opinion by Howell, G. A.

Same as No. 14192 (*supra*).

No. 14196.—PROTESTS UNSUPPORTED.—Protest 201428 of Bennett, Day & Co., protest 220486 of Demorest Manufacturing Company, protests 99656*f*, etc., of Eimer & Amend, protest 215560 of Edward C. Moore Company, protest 200863 of Morris European and American Express Company, protest 219190 of W. & J. Sloane, and protest 212811 of L. Straus & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 25, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 14197.—PROTESTS UNSUPPORTED.—Protest 211211 of Moses Norris and protest 216462 of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14196 (*supra*).

No. 14198.—PROTESTS UNSUPPORTED.—Protests 205014, etc., of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14196 (*supra*).

No. 14199.—PROTEST UNSUPPORTED.—Protest 224151 of A. J. Foster & Co. against the assessment of duty by the collector of customs at the port of Boston. Opinion by Somerville, G. A.

Same as No. 14196 (*supra*).

No. 14200.—PROTESTS UNSUPPORTED.—Protests 196965, etc., of Paul Gelpi & Sons against the assessment of duty by the collector of customs at the port of New Orleans. Opinion by Somerville, G. A.

Same as No. 14196 (*supra*).

No. 14201.—PROTEST UNSUPPORTED.—Protest 223499 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by Sharretts, G. A.

Same as No. 14196 (*supra*).

No. 14202.—HAIR-PRESS CLOTH.—Protest 199573 of Ocean Steamship Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). January 26, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6504 (T. D. 27792), relating to hair-press cloth.

No. 14203.—GRANITE MONUMENTS.—Protests 157718, etc., of Jones Brothers Company *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 28, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Baldwin *v.* United States (T. D. 27802), relating to granite monuments in sections.

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No. 14204.—SEA MOSS.—Protests 222016, etc., of A. L. Simon & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 28, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6464 (T. D. 27670), relating to sea moss.

No. 14205.—TOY CARRIAGE BODIES.—Protest 220609 of George W. Travers Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 28, 1907. Opinion by McClelland, G. A.

The protest related to bodies for toy carriages classified as manufactures in chief value of willow under paragraph 206, tariff act of 1897, and claimed to be dutiable as toys under paragraph 418. Protest overruled.

No. 14206.—SCHMASCHEN GLOVES.—Protest 219711 of Emery-Bird-Thayer Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 28, 1907. Opinion by McClelland, G. A.

The goods were held dutiable as schmaschen gloves, as claimed by the importers.

No. 14207.—FIGURED COTTON CLOTH.—Protests 229341, etc., of Billwiller Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 28, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 14208.—EMBROIDERED HOSIERY.—Protests 222337, etc., of Heilman, Loth & Feist *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 28, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6365 (T. D. 27344), relating to embroidered hosiery.

No. 14209.—PRESERVED FRUIT.—Protests 54513*f*, etc., of Bloomingdale Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 28, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6473 (T. D. 27690), relating to preserved fruit.

No. 14210.—WOOL—ABSORBED MOISTURE.—Protest 214870 of Kirkman & Vail against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 28, 1907. Opinion by Somerville, G. A.

On the authority of G. A. 6512 (T. D. 27800) and United States *v.* Falk (T. D. 27832), the Board overruled the importers' contention that an allowance should have been made for moisture absorbed by wool.

No. 14211.—PRO FORMA INVOICE.—Protest 218270 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Somerville, G. A., absent), January 28, 1907. Opinion by Hay, G. A.

On the authority of G. A. 6398 (T. D. 27488), the Board held that duty had been properly assessed on the basis of the value stated in the pro forma invoice.

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No. 14212.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 200426, etc., of Dohan & Taitt *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 28, 1907. Opinion by Hay, G. A.

Protests overruled on the authority of G. A. 6520 (T. D. 27847), relating to the application of the preferential rate of duty provided in the treaty with Cuba.

No. 14213.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 216775, etc., of Havana Tobacco Company against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14212 (*supra*).

No. 14214.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 211317-22243, etc., of Havana American Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14212 (*supra*).

TREASURY DEPARTMENT, *January 30, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 27874.)

Commissions.

ERLANGER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 3989.

1. APPRAISEMENT—CONVERTERS' COMMISSIONS.

Merchandise was bought from so-called converters, who, after receiving the orders, had the goods manufactured, dyed, and finished, and shipped them, charging an agreed price plus a commission. *Held* that this commission was properly included in the market value of the merchandise as appraised.

2. SAME—EVIDENCE OF LEGALITY—COMMISSIONS.

Held that, in proceedings to review the legality of the action of an appraising officer in including in the dutiable value of imported merchandise an alleged commission asserted by the importers to be nondutiable, evidence as to the circumstances under which such commission was paid was admissible.

3. SAME—LEGALITY—METHOD OF REVIEWING.

Findings by appraising officers as to the market value of imported goods, though ordinarily not subject to attack, may be reexamined on proceedings by protest, whenever a nondutiable amount is included in such value, or an independent item has been improperly considered.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see Abstract 5940 (T. D. 26268), affirming the assessment of duty by the collector of customs at the port of New York on merchandise imported by N. Erlanger, Blumgart & Co.

Carie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HAZEL, *District Judge:* In this controversy it is claimed that the refusal of the Board of General Appraisers to receive evidence to show the illegality of the appraisement proceedings was error. According to the importers they had paid a commission of 2½ per cent to a commissionaire in the purchase of the goods. The appraising officers,

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however, advanced the actual value of the merchandise by disallowing any deduction for commissions. The United States attorney contends that the invoices do not show the payment of a commission; that the payment of the percentage was in fact paid to the vendor of the merchandise, and therefore the collector, under the provisions of the tariff act, correctly treated the alleged commission as part of the invoiced value and subject to duty. Evidence was given to show that in arriving at the amount of duty the collector considered the market value or wholesale price at the time of exportation in the country from whence the merchandise was imported, and that in arriving at such value he complied with the provisions of sections 10, 13, and 19 of the customs administrative act of June 10, 1890, which required him to take into consideration the costs and charges to complete the shipment.

The importers offered to show before the Board the payment of a commission for services rendered in the purchase and shipment of the goods, but to this evidence the Government objected. The Board sustained the objection and the case was submitted. An application has been made to this court for a review of the decision of the Board subsequently rendered. The testimony of five witnesses is printed in the record showing that the merchandise was bought from so-called converters at the price stated in the invoice plus 2½ per cent commission. It also appears that customarily the converter after receiving an order has the goods manufactured, then dyed and finished; and when ready for transportation he forwards them and charges an agreed price including the commission. The Board decided that the action of the appraising officers, holding that the item for commissions was not independent of the market value of the goods, was final and conclusive in the absence of fraud or illegality in the proceeding; and accordingly the testimony referred to was excluded. Upon the authorities of Muser *v.* Magone (155 U. S., 240), United States *v.* Herrman (91 Fed. Rep., 116), Robertson *v.* Frank Brothers Company (132 U. S., 17), Oberteuffer *v.* Robertson (116 U. S., 499), and United States *v.* Beer (T. D. 27753) I think the evidence should have been received and considered. In the Muser case the Supreme Court substantially held that although the valuation as fixed by the appraisers is final it may, nevertheless, be attacked for want of power to make it, or where the appraisers are disqualified from acting or items have been included independent of the actual value. In United States *v.* Beer (*supra*) the circuit court says:

> As was pointed out in Robertson *v.* Frank Brothers (132 U. S., 17), the general rule that the decision of the local appraiser is final and conclusive unless revised by proceedings for reappraisement is "subject to the qualification that if the appraiser proceed upon a wrong principle, contrary to law, and this be made to appear, his appraisement is not unimpeachable."

Hence I conceive the rule to be that market values returned by the appraisers, though ordinarily not subject to attack, may nevertheless be reexamined, and the importers' remedy is by protest, whenever a nondutiable amount is included in such market value, or an independent item has been improperly considered, or where the appraiser omitted to make an inspection and examination upon which he based his appraisal.

But it is contended by the Government that the payment of the commission by the importers in the circumstances is wholly immaterial, inasmuch as the appraisers have clearly found the price charged for commission was in fact a part of the purchase price and was included in the foreign market value. The evidence upon this point taken in this court is not persuasive of the claim that the appraisers erred in their action to ascertain the real market value. Although the proofs indicate that a commission is customarily paid to a so called converter and was paid in this case, yet the invoice indicates that such converter or agent was in fact the vendor of the merchandise. It does not clearly appear that the market value in the foreign country from whence the goods were exported was different than that fixed by the appraisers.

The decision of the Board of General Appraisers is affirmed.

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(T. D. 27875.)

Screw rods.

NASH *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 18, 1907. Suit 4244.

1. SCREW RODS, COLD DRAWN.

As to iron-wire screw rods, which are cold drawn to facilitate their use in screw-making machines, the process giving them a polish, which is incidental and not necessary to such use, *Held* that they are subject only to the duty provided in paragraph 136, tariff act of 1897, for wire-screw rods, and not to the additional duty prescribed in paragraph 141 on iron rods "cold drawn * * * or polished in any way in addition to the ordinary process of hot rolling or hammering."

2. GENERAL PROVISIONS.

Where Congress has designated an article by a specific name and by such name imposed a duty on it, the general terms of a later part of the same act, although sufficiently broad to comprehend such article, are not applicable.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see G. A. 6338 (T. D. 27288), relating to merchandise imported at the port of New York by George Nash & Co.

Kammerlohr & Duffy (*Joseph G. Kammerlohr* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HAZEL, *District Judge:* Screws are manufactured by machinery from screw rods; and in order not to injure the machine the screw rod must be smooth and have a round, even surface. Accordingly, raw iron rods, which are ordinarily uneven or scaly, are cold-drawn through a die to give them the required smoothness or polish, so as to readily enable their insertion into the screw-making machine. The polish or bright appearance produced by the process of cold drawing is not necessary to the purpose for which the wire-screw rods in question were imported. The proofs show that there were two shipments of merchandise, the first being classified by the collector as round steel bars, and duty was assessed thereon at the rate of nine-tenths cent per pound under the provisions of paragraph 135 of the act of 1897. The later shipments were returned by the collector as cold-rolled and brightened screw rods, duty being assessed at four-tenths cent plus one-half cent per pound under paragraph 136 of said act, which provides that all iron or steel wire rods which have been tempered or treated in any manner or partly manufactured shall pay an additional duty of one-half of 1 cent per pound. The importers protested, claiming the merchandise to be dutiable at only four-tenths cent per pound under paragraph 136 as wire screw rods valued at 4 cents or less per pound. The Board decided that the collector was in error in assessing an additional duty of one-half cent per pound, and that the assessment should have been under paragraph 136, with the additional duty under paragraph 141, which provides for payment of one-fourth cent per pound upon iron or steel bars or rods which are cold rolled or cold drawn or polished in any way in addition to the usual process of hot rolling specifically described in paragraph 136.

The question presented by the record is whether the cold rolling of the rods to make them smooth and facilitate their use in the screw-making machine is the cold drawing specified in paragraph 141 of the act. In my opinion, the rods in question have not been advanced, by tempering or treating them, to such an extent as to carry them beyond what is understood in the trade as wire screw rods. The testimony given in

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this court, and which was not before the Board, indicates that such screw rods are not subject to the additional duty under the provisions of paragraph 141, which specifically provides for the payment of duty on iron or steel bars or rods of whatever shape or section, which are cold rolled, cold drawn, or polished. Brightening of the surface of the screw rod is subordinate and incidental to the smoothing or cold-rolling process which is essential to the production of the screw rod. In this respect, I think the case is similar to United States *v.* Crucible Steel Company (147 Fed. Rep., 587; T. D. 27446). There it was specifically held that cold-rolled steel strips, the brightening thereof being incidentally acquired in the process of cold rolling, are not subject to the additional duty provided in paragraph 141. Moreover, wire screw rods are enumerated *eo nomine* in paragraph 156, and they are not thought to be covered or included in the general language of paragraph 141. In Arthur *v.* Lahey (96 U. S., 112) the rule is laid down that when Congress has designated an article by a specific name and by such name imposes a duty upon it, the general terms in a subsequent act or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable. For the foregoing reasons the merchandise, in my judgment, was dutiable under paragraph 136 at four-tenths cent per pound, and not subject to the imposition of any additional duty. It is not necessary to pass upon the question of the sufficiency of the protest.

The decision of the Board is reversed.

(T. D. 27876.)

Forfeiture.

UNITED STATES *v.* WITTEMAN.

U. S. Circuit Court of Appeals, Second Circuit. January 7, 1907. No. 258.

1. FORFEITURE—CUSTOMS REVENUE CASES—STATUTE OF LIMITATIONS.

   Section 22, act of June 22, 1874 (18 Stat., 190), providing that forfeiture proceedings arising "under the customs revenue laws of the United States" must be begun within three years, is, at least as to customs revenue cases, an amendment to section 1047, Revised Statutes, providing a five-year limitation for forfeiture proceedings arising "under the laws of the United States."

2. FORFEITURE OF VALUE OF MERCHANDISE—"PECUNIARY PENALTY."

   The provision in section 9, customs administrative act of 1890, for the forfeiture of the value of undervalued importations, is penal in its nature, and an action for the forfeiture of such value is for "a pecuniary penalty or forfeiture" within the meaning of section 22, act of June 22, 1874 (18 Stat., 190), providing that such actions must be brought within three years after the forfeiture accrues.

IN ERROR to the district court of the United States for the eastern district of New York.

There was no opinion below. One of the contentions of the Government is stated as follows in the brief:

It is respectfully submitted that when section 9 provides that the merchandise or the value thereof, to be recovered from the person making the entry, shall be forfeited it is providing that the merchandise, if seized, may be proceeded against by an action *in rem*, but if, on the contrary, the goods have been delivered, that then an action at law may be brought for the damage which the Government has sustained by the fact that it can not recover and sell the goods. This damage, it is submitted, would be equivalent to the home value of the goods themselves. This is not, it is submitted, such "*pecuniary penalty*" as is contemplated by section 22.

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The pecuniary penalty attached to section 9 might seem to be the fine not exceeding $5.000, which is imposed upon conviction for such an offense. Or again, inasmuch as the goods have been released and can not be found or recovered, and inasmuch as the Government is suing for a sum of money in the form of damages, it is respectfully submitted that such a suit could not be called one the object of which is to work a "*forfeiture of property.*"

Pecuniary penalties are specific sums of money which in a liquidated amount are set forth as the penalty for a certain act. A fine, the penalty for breaking a game law, the amount collected by a justice of the peace under a police statute, it is submitted, are the ordinary sorts of penalty. The object against which an action *in rem* may be brought is properly the subject of "a forfeiture of property."

Thomas Ives Chatfield, assistant United States attorney (*William J. Youngs*, United States attorney, on the brief), for the United States.

Straley & Hasbrouck (*John A. Straley* of counsel), for the importer.

Before WALLACE, LACOMBE, and TOWNSEND, Circuit Judges.

This cause comes here by writ of error to review a judgment of the United States district court for the eastern district of New York dismissing the complaint in an action brought by the Government, under the provisions of section 9 of the customs administrative act of June 10, 1890, for forfeiture of the value of goods comprised in 28 separate importations received at the port of New York, between November 13, 1900, and June 23, 1902.

TOWNSEND, *Circuit Judge:* The complaint alleges that the invoices in question were false and fraudulent in that the statement of the market value of the goods comprised therein was far below the true market value of said goods at the time of exportation in the principal markets of the country from which they were imported, and that said undervalution was willfully made on the part of the defendant with the intent to defraud the United States out of a portion of the lawful duty due to it, and that the goods were delivered to the defendant upon the payment of duty based upon said false, fraudulent, and undervalued valuation.

Section 9 of the customs administrative act of 1890 provides for a forfeiture in such cases, either of the merchandise or of the value thereof, and for a fine for each offense.

The defendant interposed as a defense the statute of limitations of section 22 of the act of June 22, 1874 (18 Stat., 190), which provides as follows:

> That no suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs revenue laws of the United States shall be instituted unless such suit or action shall be commenced within three years after the time when such penalty or forfeiture shall have accrued: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

The single question presented is as to the construction and application of this statute of limitations.

Counsel for the Government admitted that "all of the causes of action were saved from the effects of a five-year statute of limitations, but that a three-year statute of limitations would have been a defense to all, if valid as to any;" and that "more than three years had elapsed before the attorneys for the Government in this case received the papers or learned of the action;" and "that the property imported * * * was not concealed or absent within the said period of three years;" and that the Government "does not claim that the defendant, Rudolph A. Witteman, in this action was either a fugitive or absent from the United States during any of the said period of three years prior to the commencement of this action."

The court directed judgment for the defendant, to which the Government duly excepted, and the various assignments of error raise the single question whether the three-year statute of limitations was in force and applicable to said cause of action.

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Prior to 1874 the following statute of limitations was in force:

No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same it commenced within five years from the time when the penalty or forfeiture accrued.

In the revision of 1878, the five-year statute was printed as section 1047 of the Revised Statutes, but the law of 1874 was only referred to as a side note to said section 1047. Counsel for the Government, therefore, argues that the commissioner who revised the statutes could not have considered the three year statute of limitations, as an amendment to the five-year statute, but as a specific statute existing for certain purposes during the entire time in which any of the causes of action could have been sued upon. There is no force in this contention, even if it is assumed that both statutes were in force at the time of the importations in question. Section 29 of the customs administrative act, under which this section is brought, provides that "acts of limitation, whether applicable to civil causes and proceedings * * * or for the recovery of penalties or forfeitures, embraced in or modified, changed or repealed by this Act, shall not be affected thereby."

Whether or not the five-year statute of limitations may apply to some causes of action not barred by the three-year statute is immaterial herein, because this action is specifically for the recovery of a forfeiture, under the provision in section 9 of the customs administrative act of 1890. in a case of fraudulent undervaluation of merchandise, that "such merchandise or the value thereof to be recovered from the person making the entry, shall be forfeited." And section 22 of the act of 1874 provides, as already shown, that "no suit or action to recover any * * * forfeiture of property * * * shall be instituted unless such suit or action shall be commenced within three years after the time when such * * * forfeiture shall have accrued."

It is clear that this is a prosecution for a penalty or forfeiture, under a Federal penal statute having for its primary object the infliction of punishment upon the offender. United States *v.* Riley (88 Fed. Rep., 480; 104 Fed. Rep., 275); Davis *v.* Mills (99 Fed. Rep., 39); Waterford *v.* Elson (not reported); Huntington *v.* Attrill (146 U. S., 657). In Helwig *v.* United States (188 U. S., 605) the Supreme Court of the United States had occasion to consider section 7 of said customs administrative act of 1890, which, *inter alia*, then provided as follows:

If the appraised value of any article of imported merchandise shall exceed by more than ten per centum the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, a further sum equal to two per centum of the total appraised value for each one per centum that such appraised value exceeds the value declared in the entry.

Mr. Justice Peckham says:

The sole question is whether the sum imposed by section 7, already quoted, is a penalty. Without other reference than to the language of the statute itself, we should conclude that the sum imposed therein was a penalty. It is not imposed upon the importation of all goods, but only upon the importer in certain cases, which are stated in the statute, and it is clear that the sum is not imposed for any purpose of revenue, but is in addition to the duties imposed upon the particular article imported, and in each individual case when the sum is imposed it is based upon the particular act of the importer. That particular act is his undervaluation of the goods imported, and it is without doubt a punishment upon the importer on account of it. Whether the statute defines it in terms as a punishment or penalty is not important, if the nature of the provision itself be of that character. If it be said that the provision operates as a warning to importers to be careful and to be honest, it is a warning which is efficacious only by reason of the resulting imposition of the "further sum," in addition to the duties provided for by the statute.

If the requirement in section 7 of the payment of an additional sum, in case of undervaluation, is penal in its nature, *a fortiori* the provision in section 9 for a forfeiture in case of a fraudulent undervaluation is penal.

The judgment is affirmed.

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(T. D. 27877.)

Dirt in nuts.

SPENCER *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. January 11, 1907. No. 118 (suit 3953).

SHELLED NUTS—ALLOWANCE FOR DIRT.

In assessing the duty per pound provided on shelled nuts in paragraphs 269 and 270, tariff act of 1897, no allowance should be made for impurities found in the nuts on importation.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 143 Federal Reporter, 916 (T. D. 26974), affirming a decision of the Board of United States General Appraisers, G. A. 5943 (T. D. 26090), which had affirmed the assessment of duty by the collector of customs at the port of New York on importations by Spencer & Co.

Said importations consisted of walnuts contained in boxes, and of almonds and filberts contained in bags, and were classified under the specific enumerations of those particular kinds of nuts in paragraphs 269 and 270, tariff act of 1897, in which they are made dutiable "per pound." The importers' contention was that in ascertaining the dutiable weight of the nuts allowance should be made for impurities found therein on importation. It was held by the circuit court that, in the absence of evidence of abnormal quantities of foreign matter or of a variation from the ordinary wholesale condition, such allowance should not be made.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

Before WALLACE, TOWNSEND, and COXE, Circuit Judges.

PER CURIAM: Decision affirmed.

(T. D. 27878.)

Protest.

FULD *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. January 11, 1907. No. 117 (suit 4038).

PROTEST—CONSTRUCTION—"OTHER RATE OR RATES."

A protest read in part, "protest is hereby made against * * * your decision assessing duty at 35 per cent ad valorem, or other rate or rates, on lithographic prints, krippen, mechanical cards, etc., covered by entries below named. * * * This protest is intended to apply separately and collectively to every part of goods assessed under paragraph 418, as well as to all other goods assessed at 35 per cent ad valorem." The entry referred to did not cover any merchandise assessed at the rate of 35 per cent ad valorem, or under said paragraph 418, but did cover lithographic prints and booklets assessed under paragraph 400. *Held* that the protest might be construed as relating to those articles, and not as limited to goods assessed at 35 per cent.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 143 Federal Reporter, 920 (T. D. 27134), which affirmed a decision of the Board of United States General Appraisers, Abstract 6676 (T. D. 26390),

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overruling a protest of Fuld & Co. against the assessment of duty by the collector of customs at the port of New York. The pertinent part of said protest reads as follows:

Protest is hereby made against your ascertainment and liquidation of duties and your decision assessing duty at 35 per cent ad valorem, or other rate or rates, on lithographic prints, krippen, mechanical cards, etc., covered by entries below named. The reasons for objection under the tariff act of July 24, 1897, are as follows: Said merchandise is lithographic prints. It is covered by paragraph 400, and is dutiable thereunder at 5 cents per pound, or 6 cents per pound, or other rate or rates, according to thickness, cutting size, etc. If not as aforesaid, it is printed matter or otherwise covered by paragraph 403, and is dutiable thereunder at only 25 per cent ad valorem. This protest is intended to apply separately and collectively to every part of goods assessed under paragraph 418, as well as to all other goods assessed at 35 per cent ad valorem.

It appeared that the merchandise covered by the entry mentioned in the protest consisted of lithographic prints and booklets, assessed at the rate of 20 cents per pound and 8 cents per pound, respectively, under paragraph 400, tariff act of 1897, and that no part of the importation was classified at 35 per cent or under paragraph 418. The Board held that the protest was insufficient on the ground that it was in terms confined to merchandise assessed at 35 per cent, and therefore could not be construed as covering the articles classified at a different rate. This ruling was affirmed by the circuit court in the decision above cited; but on the ground that the protest "did not point out specifically and distinctly the proper rate of duty."

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: Decision reversed in open court, and protest held to be a sufficient compliance under paragraph 14 [section 14], customs administrative act of 1890.

(T. D. 27879.)

Corporate sureties on official bonds, etc.—Ten per cent limit.

[Circular No. 8.]

TREASURY DEPARTMENT, *February 1, 1907.*

Department Circular 105 of December 22, 1906, is hereby amended to read as follows:

1. Hereafter no surety company shall be accepted under the provisions of the act of Congress approved August 13, 1894, as sole surety on any recognizance, stipulation, bond, or undertaking under this Department for an amount greater than 10 per cent of its paid-up capital and surplus; except bonds of the Internal Revenue Service, on which the aggregate amount for which a company may become liable as surety for any one principal shall be limited to the amount of paid-up capital and surplus of said company, provided that this exception does not include official bonds required of collectors of internal revenue.

2. No such company shall be accepted as surety on any recognizance, stipulation, bond, or undertaking under this Department which shall execute any such obligation on behalf of any individual, firm, association, or corporation for an amount greater than 10 per cent of its paid-up capital and surplus, unless such company shall be secured as to such excess to the satisfaction of the Secretary of the

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Treasury, by reinsurance, or by deposit with such company in pledge or conveyance to it in trust, for its security or indemnity, of property equal in value to such excess; or if such bond is executed on behalf or on account of a fiduciary holding property in a trust capacity, the liability thereon in excess of 10 per cent of the paid-up capital and surplus shall be secured by such deposit or other disposition of a suitable and sufficient portion of the estate so held that no sale, mortgage, pledge, or other disposition can be made thereof without such company's approval; provided further that such portion of any such bond which shall have been reinsured by such company in another surety, trust, or guaranty company or companies authorized to do business under the act of Congress of August 13, 1894, shall be deducted from the penal sum of such bond in determining the limitation of risk prescribed herein, if the same is within the 10 per cent limit of such reinsuring company or companies.

3. Two or more companies may be accepted as sureties upon any recognizance, stipulation, bond, or undertaking under this Department, the penalty of which does not exceed 10 per cent of their aggregate paid-up capital and surplus (or the total aggregate paid-up capital and surplus of such companies on bonds of the Internal Revenue Service as provided in paragraph 1 hereof), but in all such cases the sureties must, where the law requires it, execute such obligation jointly and severally.

4. The amount of paid-up capital and surplus of such companies shall be determined by the quarterly financial statements filed with the Attorney-General pursuant to section 4 of the act above referred to, after copies of such statements have been filed in this office.

5. If the amount of said capital and surplus shall at any time during the intervals between the dates of the rendition of such statements, as required by law, become less than the amount determined in the statement last filed, then every such company shall file, within ten days after such diminution of its capital and surplus, a condensed statement sworn to by one of its principal officers at the home office, showing the nature and extent of such diminution; and the amount of such capital and surplus remaining shall be the basis for risks until the rendition of the next quarterly statement.

6. Every such company shall file in this Department, during the months of January, April, July, and October of each year, a report giving an itemized statement of all recognizances, stipulations, bonds, or undertakings which such company shall have executed during the previous three months in excess of 10 per cent of its paid-up capital and surplus, showing the character and penalty of such obligations, the nature and amount of indemnity, collateral, or reinsurance thereon, and such other information in regard thereto as may be requried.

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7. Any violation of the provisions of this order or failure on the part of any company to comply promptly with its requirements will be considered ground for refusing thereafter to accept such company as surety upon any recognizance, stipulation, bond, or undertaking under this Department and for recommending to the Attorney-General that the authority of such company to do business under the act above referred to be revoked.

LESLIE M. SHAW, *Secretary.*

(T. D. 27880.)

Drawback on pressed steel cars.

Drawback on pressed steel cars manufactured by the Pressed Steel Car Company, of Pittsburg, Pa., with the use of imported brake material.—T. D. 25956 of January 12, 1905, extended.

TREASURY DEPARTMENT, *February 1, 1907.*

SIR: The Department's regulations of January 12, 1905 (T. D. 25956), establishing a rate for the allowance of drawback on steel cars manufactured by the Pressed Steel Car Company, of Pittsburg, Pa., with the use of imported buffers and draw gears, are hereby extended, so far as applicable, to cover the exportation of these cars provided with imported brake material fitted and attached thereto.

Respectfully, A. F. STATTER,
(23877.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27881.)

Drawback on trimmings.

Drawback on trimmings manufactured by the Kursheedt Manufacturing Company, of New York, with the use of imported metal thread, with or without the use of imported artificial silk.—T. D. 24804 of November 24, 1903, as amended by T. D. 26704 of September 12, 1905, extended.

TREASURY DEPARTMENT, *February 2, 1907.*

SIR: The Department's regulations of November 24, 1903 (T. D. 24804), as amended by T. D. 26704 of September 12, 1905, providing for an allowance of drawback on trimmings manufactured by the Kursheedt Manufacturing Company, of New York, with the use of imported artificial silk, are hereby extended, so far as applicable, to cover said trimmings when manufactured with imported metal thread either with or without the use of imported artificial silk, upon the filing with the collector of sworn schedules showing the quantity of each material contained in each gross yard of trimmings, and the waste incurred in the manufacture according to the form attached and made a part of their sworn statement, dated January 22, 1907, which is transmitted herewith for filing in your office.

Respectfully, A. F. STATTER,
(10345.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27882.)

Common carrier.

Approving bond of the Lake Shore and Michigan Southern Railway Company for transportation of appraised merchandise.

TREASURY DEPARTMENT, *February 4, 1907.*

SIR: The bond of the Lake Shore and Michigan Southern Railway Company, transmitted with your letter of the 28th ultimo, for bonding the carrier for the transportation of appraised merchandise, under sections 3000 and 3001 of the Revised Statutes, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The shipment of appraised merchandise under the bond of said company which was approved April 29, 1895, is hereby discontinued.

You will note the discontinuance on said bond, and hold the same without cancellation to meet any liability which may have accrued according to its terms.

The privilege of the transportation of appraised merchandise authorized under the old bond above mentioned is to be continued under the bond herein approved.

Respectfully, A. F. STATTER,
(36686.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 27883.)

Drawback on mills.

Drawback on mills manufactured by The C. S. Bell Company, of Hillsboro, Ohio, with the use of imported pig iron.

TREASURY DEPARTMENT, *February 4, 1907.*

SIR: On the exportation of mills manufactured by The C. S. Bell Company, of Hillsboro, Ohio, with the use of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the number of mills of each kind contained in each package and in the entire shipment. Each package must be marked to show its contents.

The drawback entry must show the number of mills of each kind exported, the net weight of the parts manufactured from the imported pig iron on which drawback is claimed, stated separately for each kind of mill and in the aggregate. Said entry must further show, in addition to the usual averments, that the exported mills were manufactured of the material and in the manner set forth in the manufacturers' sworn statement, dated January 14, 1907, transmitted herewith for filing in your office.

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In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity consumed, as declared in the drawback entry, after official verification of the exported quantities, provided that in no case shall it exceed the net weight of the parts manufactured from the imported pig iron, as shown in the manufacturers' sworn statement.

Respectfully, A. F. STATTER,
(42200.) *Assistant Secretary.*
SURVEYOR OF CUSTOMS, *Cincinnati, Ohio.*

(T. D. 27884—G. A. 6533.)

Manufactures of glass—Glass tubing.

Cylinder glass tubing employed principally as adjuncts to scientific apparatus in chemical laboratories after being fashioned and fitted as required, and which, like cylinder window glass, is dealt in in commerce either by measurement or *by weight, Held* not to be blown glassware dutiable at 60 per cent ad valorem under paragraph 100, tariff act of 1897, but to be manufactures of glass, and, as such, dutiable at 45 per cent ad valorem under paragraph 112 of said act.—Rogers *v.* United States (121 Fed. Rep., 546), United States *v.* Fensterer (84 Fed. Rep., 148), United States *v.* Durand (137 Fed. Rep., 382; T. D. 26123), and United States *v.* Simon (84 Fed. Rep., 154) cited and followed.

United States General Appraisers, New York, January 31, 1907.

In the matter of protests 5442*h*, etc., of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* These protests are directed against the assessment of duty at 60 per cent ad valorem under paragraph 100 on certain glass tubing invoiced as "Cylinderröhren," "Burettenröhren," and "Biegröhren" (cylinder tubing, burette tubing, and bending tubing). With the exception of the diameter, the tubes do not differ in any material respect, and are made by drawing out a blown-glass cylinder to a length necessary to secure the desired size or diameter.

The tubing in question is constructed in precisely the same manner as is gauge-glass tubing. The latter, however, is composed of inferior material, and the walls thereof are thicker. In Rogers *v.* United States (121 Fed. Rep., 546) the circuit court of appeals for the second circuit said:

The merchandise in issue is gauge glasses. They are *sections* of *glass tubing* entirely finished so far as any further work of the glass maker is concerned, and ready to be mounted into a construction of which they form a factor. They are complete glass tubes, and as such are a commercial article of glassware.

It would seem from the language of the court that the merchandise then under consideration was completed gauge glasses; and, inasmuch as the court was dealing with finished articles which would

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include such as were provided with a scale etched or painted thereon, its ruling is not applicable to glass tubing imported in lengths of approximately 5 feet as in the present case, and intended for use, after breaking or cutting into desired lengths, as adjuncts to apparatus employed for experimental or analytical purposes in chemical laboratories. In later cases the circuit court of appeals for the second circuit has definitely settled the point that unfinished articles of blown *glass* are not blown *glassware*. In the case of United States *v.* Fensterer (84 Fed. Rep., 148) the circuit court for the southern district of New York, referring to blown glass blanks, said:

> They were of glass and had been manufactured to some extent, and were therefore manufactures of glass. They were not completed for their intended use and would be sought by manufacturers of, and not by dealers in, glassware, and would seem to be materials for glassware rather than glassware itself.

In United States *v.* Durand (137 Fed. Rep., 382; T. D. 26123), the circuit court of appeals for the second circuit quoted the language of the lower court in the Fensterer case (*supra*) with approval; and in harmony with this decision is the case of United States *v.* Simon (84 Fed. Rep., 154), where it was held that rubber tubing, colored to imitate the stems of artificial flowers, when imported in meter lengths was not parts of artificial flowers but materials therefor.

It is very significant that a representative of the only domestic manufacturer of glass tubing similar to that now upon appeal stated at a hearing in this case that he did not regard gauge glass or cylinder tubing as blown glassware, but as a material designed for use in the construction of such glassware. His opinion, it will be seen, coincides with that of the circuit court of appeals in the Durand case (*supra*).

The tariff act of 1897 enumerates glass and glassware as a subdivision of Schedule B. Window and other forms of glass not made up into completed articles are known as glass, just as the merchandise in dispute is known as glass tubing, finished articles such as vases, dishes, glass thermometers, scientific apparatus, etc., being known as glassware. Window glass, glass tubing, and similar unfinished materials when broken remain glass, and even small pieces thereof may still be used for the purpose for which they were designed; but glassware when broken becomes glass and is no longer commercial glassware.

Further, as showing the close relationship between the ordinary cylinder window glass and cylinder tubing, it is somewhat instructive to note that cylinder glass is dutiable (according to size) by weight and is dealt in in trade and commerce by measurement or by weight. Cylinder tubing is also invariably dealt in both in this country and abroad at a stipulated price per weight—a condition that exists with regard to no article of blown glassware.

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The tubing in question is not known commercially as blown glassware, and we think this fact is important. The circuit court of appeals in the Durand case cited found that there was no commercial meaning for the term "glassware," and while we are convinced of the soundness of this ruling regarding glassware we are of opinion that the term "*blown* glassware" has a trade meaning which, contrary to technical accuracy, differentiates blown glassware from other kinds of glassware. Window glass, known as cylinder glass, is made with the aid of a pipe, the elongated cylinder of glass thus produced being merely cut and flattened; hence the resultant sheets fall within the dictionary definition of blown glass. Bonbon boxes, jewelry cases, picture frames, and hundreds of other articles of which cylinder glass is the component material of chief value, would be technically manufactures of which blown glass is the component material of chief value. Within the trade understanding, however, they would not be so regarded. On the other hand, fully 90 per cent of all blown glassware is produced in a mold, and technically would be molded glassware; but it is not so commercially known, and by common consent is never classified as molded glassware even for tariff purposes. Blown glassware—either blown in a mold or free handed—is the product of highly paid skilled artizans, while cylinder glass and articles made by pouring molten glass from ladles into molds is the product of ordinary workmen. Glass tubing like that now in question is included in the second class and not the first, and is in fact cylinder glass or, more properly speaking, elongated cylinders of glass.

Quoting from the opinion of the court in United States *v.* Durand (*supra*)—

> It may be mentioned *in limine* that even a cursory reading of the language employed in paragraph 100 would seem to indicate that it is most inappropriate to describe the rough, unfinished articles in question.

Would it not seem that this dictum of the court applies with striking force to the tubing now in question, which, if classified as blown glassware, would become a single exception whereby material used exclusively for manufacturing or industrial purposes, and which is invariably bought and sold by weight, is separated from kindred materials similarly bought and sold, and classified with articles like "cut-glass bottles, cut-glass decanters, and other articles of glass, cut, engraved, painted, etc.?"

In accordance with the views herein set forth and on the authority of the decision of the circuit court of appeals in United States *v.* Durand (*supra*), we find that the merchandise is manufactures of glass, and that the same is not blown glassware; and we hold that it is properly dutiable at 45 per cent ad valorem under paragraph 112 of the tariff act of 1897.

The protests are accordingly sustained and the collector's decision in each case reversed.

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(T. D. 27885—G. A. 6534.)

Protests not in conformity with act of June 10, 1890.

A "blanket" protest against all rates assessed, containing irreconcilable allegations of fact, and claiming the goods dutiable under twenty-four different provisions of the tariff act of 1897 that prescribe over 50 different rates of duty, held not to comply with the requirements of section 14, act of June 10, 1890, that the protest shall set forth therein distinctly and specifically the reasons for the objection of the importer to the collector's decision.—Davies *v.* Arthur (96 U. S., 148), Burgess *v.* Converse (2 Curt., 223), Herrman *v.* Robertson (152 U. S., 521), G. A. 6223 (T. D. 26897), G. A. 6487 (T. D. 27743), and G. A. 6491 (T. D. 27761) cited and followed; Koechl *v.* United States (91 Fed. Rep., 110) cited and distinguished.

United States General Appraisers, New York, February 1, 1907.

In the matter of protests 194951, etc., of J. H. Lichtenstein & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The protests which are the subject of this opinion are in form as follows:

Notice of dissatisfaction is hereby given with and protest is hereby made against your ascertainment and liquidation of duties, and your decision assessing duty at 30 per cent ad valorem or 60 per cent ad valorem or 50 per cent ad valorem or other rate or rates on braids, plaits, laces, hats, or other articles, composed wholly or in part of horsehair or of imitation or artificial horsehair, silk, straw, cotton, chip, grass, or other substance, covered by entries below named. The reasons for objection, under the tariff act of July 24, 1897, are as follows: Said merchandise is covered by and is dutiable under section 6 at only 20 per cent ad valorem, or paragraph 409 at only 15 per cent ad valorem or 20 per cent ad valorem (as braids, plaits, laces, sheets, or squares) or at only 35 per cent ad valorem or 50 per cent ad valorem (as hats, bonnets, or hoods). If not dutiable as aforesaid all of said merchandise is covered by and is dutiable under paragraph 430 at only 10 per cent ad valorem, or paragraph 429 at only 20 per cent ad valorem, or paragraph 198 (as wood) at only 20 per cent ad valorem, or paragraph 3 (as chemical compounds) at only 25 per cent ad valorem, or paragraph 431 at only 10 cents per square yard or only 20 cents per square yard, or paragraph 255 at only $1.50 per ton, or paragraph 323 at only $5 per ton. Such of said merchandise as has been assessed for duty at more than 30 per cent ad valorem, if not dutiable as aforesaid, is covered by and is dutiable under paragraph 449 (as manufactures of chip, grass, palm leaf, straw, weeds, etc., or of which these substances or either of them is the component of chief value) at only 30 per cent ad valorem, or paragraph 450 (as manufactures of human hair or other substance therein named or of which these substances or either of them is the component of chief value) at only 35 per cent ad valorem, or paragraph 208 (as manufactures) at only 35 per cent ad valorem, or paragraph 433 at only 35 per cent ad valorem, or the last part of paragraph 346 at only 35 per cent ad valorem, or paragraph 347 at only 45 per cent ad valorem, or paragraph 320 (as tapes, webs, webbing, or other article therein named) at only 45 per cent ad valorem, or paragraph 322 at only 45 per cent ad valorem, or paragraph 314 (as clothing or articles of wearing apparel) at only 50 per cent ad valorem, or paragraph 389 (as bandings, hatbands, webs, webbings, or other article therein named) at only 50 per cent ad valorem, or paragraph 391 (as manufactures) at only 50 per cent ad valorem. Such of the merchandise covered by this protest as has been assessed with more duty than would accrue upon it under the remaining paragraphs herein mentioned, if not dutiable as aforesaid, is covered by and is dutiable under the first part or proviso of paragraph 346 at the rate or rates therein provided according to weight, count, etc.,

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or paragraph 17 at only 50 cents per pound, or only 60 cents per pound, or only 65 cents per pound and 25 per cent ad valorem, or paragraph 432 as therein provided according to value, or paragraph 802 as therein provided according to number, etc. All of the merchandise covered by this protest is either composed in sufficient quantities of the materials required by the paragraphs herein referred to or else it is nonenumerated articles and subject to sections 6 and 7, because composed wholly or in chief value or in part of horsehair or of imitation or artificial horsehair, silk, straw, cotton, chip. grass, or other substance.

This protest also applies to the so-called ornaments and to all other items upon the invoices.

The parts of the law referred to in above claims are the only, or the most apt and specific, ones for said merchandise or articles and should control the classification. The above claims, severally and collectively, are alternatively made under the paragraphs or sections referred to, both directly, and by similitude and component material or otherwise as provided in section 7, and by the rules as to the ordinary meaning of words, the statutory meaning, commercial designation, meaning, or usage, controlling force of chief use and chief component in value, and by all statutory, judicial, or other rules for the construction of the law; hereby reserving all questions of law and fact. This protest is intended to apply to all merchandise or articles included in the entries and importations referred to herein, and to each and all future importations of the same or similar merchandise or articles, and to the payments thereon. The entry numbers and other marks, numbers, and data below given are given under duress, without prejudice, to aid you, and not to limit this protest. The excess is paid under compulsion, to obtain and retain possession of said merchandise or articles, and you and the Government are held liable for the same, and a demand for the repayment thereof, and for a readjustment or liquidation of the entries in accordance with the above claims is hereby made.

The offer is hereby made to furnish evidence to the Board of United States General Appraisers, on reasonable notice from them, of the facts involved and in support of the contentions herein.

These protests represent an unusually obnoxious development of the "blanket" variety of protest, enumerating, as they do, twenty-four different provisions of the tariff law under which the goods are claimed to be dutiable, at over 50 different rates of duty, and containing such utterly irreconcilable allegations of fact as that the goods are curled hair for mattresses; that they are human hair; that they are hair cloth; that they are chemical compounds; that they are straw; that they are flax straw; that they are wood, unmanufactured; that they are manufactures of wood; that they are indurated fiber ware or wood pulp; that they are collodion, rolled or in sheets, or manufactured into articles.

After a hearing in which some testimony and many samples were introduced—but not until then—it was ascertained that the protests related to the assessment by the collector of a duty of 60 per cent ad valorem under the provisions of paragraph 390 and section 7 of the tariff act of 1897 on certain braids, hats, and trimmings made of real and imitation horsehair, respectively, by similitude to such articles made of silk, and to a duty of 50 per cent ad valorem under the provisions of paragraph 390 and section 7 of said act on certain ornaments made of the same materials; but even at the hearing no mention was made

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of which of the many and diverse claims in the protests the importers sought to establish, the testimony being virtually nothing but the offering and verification of samples. We are advised by the importers' counsel that this decision will, if adverse to them, be appealed, and the procedure before the Board in these cases is in accordance with the pernicious practice which prevails at the customs bar of procuring a decision from the Board on an incomplete record, the protestants introducing but a modicum of the testimony they could produce, so as to evade the rulings in United States *v.* China and Japan Trading Company (71 Fed. Rep., 864); Goat and Sheepskin Import Company *v.* United States (113 Fed. Rep., 1022), Donat *v.* United States (124 Fed. Rep., 463), Appeal of Hamano (Estee's Hawaiian Reps., 344; T. D. 24946), Allen *v.* United States (127 Fed. Rep., 777; T. D. 25052), and Mendelson *v.* United States (146 Fed. Rep., 78; T. D. 27088), all of which decisions are applications of the principle well expressed by Judge Wallace in the China and Japan case (*supra*):

> The whole scheme of the customs administrative act would be defeated if the importer who complains of the action of the collector can obtain a review of that action by the circuit court without first resorting to the Board of General Appraisers and obtaining its decision *upon the facts and the law of the case.*

The effect of the present practice of taking further testimony in the circuit court (which could as well be produced before the Board in the majority of cases) is frequently to place before the court an entirely different state of facts from that passed on by the Board.

The invoices in these importations covered a great quantity of merchandise besides the items which were pointed out at the hearing as the goods to which the protests relate and, inasmuch as it required a hearing to indicate them, and that even the record thus made does not show what the nature of the importers' claim is, the conclusion is irresistible that the protests do not conform to the requirements of section 14 of the act of June 10, 1890 (26 U. S. Stat., 131; U. S. Comp. Stat., p. 1886), that the importer shall, "if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto." If we, after hearing the importers' case presented, fail to find in the record any indication of what the importers' claim is, how can it be said that the protests were sufficiently specific to enable the collector to rectify any possible error in classification he may have made by reliquidating the entry in accordance with the importers' claim? Yet, as has been repeatedly held, that is one of the chief purposes of a protest.

In Davies *v.* Arthur (96 U. S., 148) it was said:

> Persons importing merchandise are required to make their protests distinct and specific, in order to apprise the collector of the nature of the objection, before it is too late to remove it, or to modify the exaction. * * *

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Protests of the kind must contain a distinct and clear specification of each substantive ground of objection to the payment of the duties. Technical precision is not required; but the objections must be so distinct and specific, as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one that could be obviated. Burgess *v.* Converse (2 Curt., 223).

This rule has been quoted with approval and followed in many subsequent decisions. Surely when, as in the case at bar, a hearing has been held on the protest and testimony of the importers taken, and the record thus made fails to disclose the ground on which the importers seek a recovery of the duties paid, it must have been impossible for the collector to deduce from the protests the nature and character of the importers' objection. Manifestly, if, at this stage of the proceedings, the objection remains undisclosed, the protests can exhibit no intrinsic evidence that it was "in the mind of the importer" when they were made. Note Herrman *v.* Robertson (152 U. S., 521).

Another case precisely in point is Fauché *v.* Schell (33 Fed. Rep., 336), wherein the court said:

A protest made in case of merchandise not enumerated *eo nomine* in the tariff act in force at the time of its importation, and stating only that the same is claimed to be dutiable at a rate of duty which is imposed upon upward of 50 articles specially enumerated therein is insufficient under the protest act of February 26, 1845, and no recovery can be had thereunder.

This case was affirmed upon appeal by the Supreme Court. See Schell *v.* Fauché (138 U. S., 562).

In holding these protests defective and overruling them, we are not to be understood as laying down any general rule that protests making alternative claims are, for that reason alone, defective. In proper cases they are perfectly valid, as, for instance, where an article falls fairly within more than one provision of the tarff and the question arises as to which is the most specific provision. Such a case is Koechl *v.* United States (91 Fed. Rep., 110), where an importation of antipyrin, which fell within the terms of both paragraph 19 of the tariff law of 1890 as a product of coal-tar, not a color or dye, and of paragraph 74 as a medicinal preparation of which alcohol is a component part or in the preparation of which alcohol is used, was held to be dutiable under paragraph 74 as the more specific. As the court there said—

Protests upon alternative grounds are proper, and in many cases the question as to which one of several tariff provisions should control in the classification of an importation is so doubtful that the importer is fully justified in leaving it to the courts. It would impose upon the importer a great hardship to compel him to decide this question himself, *when he is entitled to the benefit of one of several enumerations, but the particular one is to be ascertained by judicial construction.*

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The protests before us represent a grotesque distortion of the doctrine thus enunciated by the court, and it is not too much to say that they make the statutory requirements a farce. It does not seem that there is such a correlation between horsehair braids and hats, and curled hair for mattresses, chemical compounds, sheets of collodion, straw or flax straw dutiable by the ton, sawed planks of cabinet wood, manufactures of fur, gelatin, ivory, shell, etc., and indurated fiber ware or manufactures of wood pulp, as to require any judicial construction in the matter.

The purpose, or at any rate the effect, of protests drawn in this manner is to befog the issue so that the collector could not allow a claim, thus necessitating an appeal to the Board and perhaps the courts, and fomenting avoidable litigation.

The correctness of the assessment of duty on real and imitation horsehair hats and braids by similitude to silk hats and braids was affirmed in G. A. 6223 (T. D. 26897), G. A. 6487 (T. D. 27743), and G. A. 6491 (T. D. 27761), following various judicial authorities therein cited.

Of the protests enumerated in the schedule attached to this decision, protests 195039, 195041, 196681–2, 197275, 199114, 203595, and 205485 were submitted without the introduction of any evidence in support thereof, and protests 205131, 202612, and 205073–4 were formally abandoned by the importers.

On all grounds the protests are overruled and the decision of the collector in each case affirmed.

(T. D. 27886—G. A. 6535.)

Antipasto—Fish in tin packages.

So-called "antipasto," a relish composed of tunny fish, mushrooms, olives, onions, and gherkins packed in olive oil in small tins, and having fish for its chief component in value and quantity, is dutiable under the provision for fish in tin packages in paragraph 258, tariff act of 1897, either directly or as being an unenumerated article composed in chief value of fish and so dutiable by virtue of section 7 of the act. It is error to assess the article under the provision in paragraph 241 for "pickles and sauces of all kinds * * * and fish paste or sauce."

United States General Appraisers, New York, February 4, 1907.

In the matter of protest 222334 of E. M. Gualdi & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods are described in the invoice as "antipasto," and consist of a relish composed of tunny fish, mushrooms, olives, onions, and gherkins packed in olive oil in small tins. According to the testimony, fish are the principal ingredient in value as they are in quantity.

Paragraph 241 of the tariff act of 1897 reads in part, "all vegetables, prepared or preserved, including *pickles and sauces* of all

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kinds, not specially provided for in this Act, and *fish paste or sauce*, forty per centum ad valorem," and was thought to apply by the customs officers.

The importers claim assessment should be made under paragraph 258, which, after laying various rates on "fish known or labeled as anchovies, sardines, sprats, brislings, sardels or sardellen, packed in oil or otherwise, in bottles, jars, tin boxes or cans," prescribes on "all other fish (except shellfish), in tin packages, thirty per centum ad valorem." Such classification, protestants maintain, is proper for the reason that "antipasto" is an unenumerated article having fish for its component material of chief value, and section 7 of the act requires that "on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value."

Although composed in part of pickles, the commodity is not in our judgment the "pickles" described in paragraph 241. Moreover, the fish is in small slices or chunks, not "paste" in any sense and conclusively not "sauce." Bogle *v.* Magone (152 U. S., 623); *In re* Johnson (56 Fed. Rep., 822). It is by no means certain that "antipasto" is not "enumerated" as "fish in tin packages." The pieces of fish are so substantial in size and quantity that it does no great violence to the facts to characterize the article as fish, flavored or garnished with mushrooms, olives, pickles, etc. However this may be, we are satisfied that the product, if not so enumerated, would have to be classified as an unenumerated article of two or more materials having fish for its component material of chief value. Murphy *v.* Arnson (96 U. S., 131); Levi *v.* United States (126 Fed. Rep., 420; T. D. 25050).

The protest is sustained and the collector's decision reversed.

(T. D. 27887—G. A. 6536.)

Appraisement after seizure—Reliquidation under section 21, act of June 22, 1874.

1. SEIZED GOODS—JURISDICTION OF UNITED STATES DISTRICT COURTS.

Where goods have been seized under an order of the United States district court for forfeiture for undervaluation, the sole question to be determined under section 32, tariff act of 1897, is whether such undervaluation was fraudulent. Such court, however, is without jurisdiction to determine the rate and amount of duty assessable on such imported merchandise.

2. SAME—RIGHT OF REAPPRAISEMENT.

Where imported goods have been seized for undervaluation, this fact does not deprive the consignee or owner of the right of reappraisement given in section 13 of the customs administrative act of 1890, and the same principle would apply with equal reason to the right of the collector or surveyor of customs to call for a reappraisement.

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3. SAME—ADDITIONAL DUTIES ASSESSABLE.

The additional duties provided for under section 32, tariff act of 1897, are assessable, except in cases arising from a manifest clerical error, irrespective of any question of fraudulent undervaluation on the part of the importer.

4. SECTION 21, ACT OF JUNE 22, 1874, A STATUTE OF LIMITATIONS.

There is no limit of time within which collectors may reliquidate an entry, except the limitations prescribed by section 21 of the act of June 22, 1874 (18 Stat., 190), which has been held to be in the nature of a statute of limitations.

5. TIME DURING WHICH A RELIQUIDATION MAY BE MADE.

Said section 21, among other limitations, authorizes a reliquidation to be made more than one year after the entry of the merchandise, provided such merchandise has not been delivered to the owner, importer, agent, or consignee, but is still constructively in the possession of the Government.

6. PURPOSE OF SAID SECTION 21.

The purpose of said section 21 would seem to be (other conditions being complied with) to permit all errors and mistakes lawfully capable of correction by the collector or surveyor of customs to be corrected by reliquidation so long as the merchandise under consideration remains in possession of the Government.

7. BOARD OF GENERAL APPRAISERS—MANNER OF ACQUIRING JURISDICTION.

A Board of three General Appraisers, or a single General Appraiser, acquires jurisdiction to hold a reappraisement simply by the transmission to them by the collector of the record and other papers mentioned in section 13 of the customs administrative act, and directing a reappraisement, without any statement made by such officer that he deems the appraisement as made too low.

8. ENTRY OF IMPORTED MERCHANDISE CONTEMPLATED BY THE STATUTES.

The provisions of the customs administrative act and other Federal statutes contemplate and presuppose an entry of imported merchandise, except as otherwise specially provided by law. The jurisdiction of the Board of General Appraisers would seem to be confined to cases where such entry has been made.

United States General Appraisers, New York, February 4, 1907.

In the matter of protest 214708 of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* In November, 1902, an importation was made of a case of paintings at the port of St. Louis by one David Sommers. Messrs. C. H. Wyman & Co., as agents for said Sommers, made an entry of the merchandise on November 17, 1902, this entry being made on a pro forma invoice, and the value of the goods being stated to be $205, as returned by the local appraiser. On demand of the surveyor the importer gave a bond for the production of a consular invoice within three months. In the meanwhile the surveyor liquidated the entry on the basis of the appraiser's valuation. The duties were paid accordingly and the goods delivered to the importer. Subsequently, however, consular invoices were furnished to the surveyor showing the total valuation of the paintings to be $750. Thereupon the surveyor called for a reappraisement of the goods, which were reappraised at the value shown by the consular invoice. On demand made by the surveyor, the goods were then taken out of Mr. Sommer's possession, and an information was filed for forfeiture of the paintings under section 7 of the

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act of June 10, 1890. This application was filed in the United States district court, eastern district of Missouri, the number of the suit being 3687 on the docket of the court.

The case being submitted to the court on the pleadings and proof adduced, it was adjudged that the goods be surrendered into the possession of said claimant Sommers upon payment of the duty on the true value of the paintings as shown by the consular invoices, but "without the additional duty of 50 per cent in the nature of a penalty provided for under certain circumstances and which the court holds should not be applied in this case." A copy of this judgment was introduced in evidence and is marked "Exhibit No. 1."

On June 29, 1906, after this judgment had been rendered, the surveyor at St. Louis reliquidated the entry, assessing duty on the value as shown by the reappraisement, and adding 50 per cent penalty or additional duties. Against this reliquidation the importer duly protested.

It is admitted by counsel that the only question that could properly arise before the district court in the forfeiture proceedings was whether there had been a fraudulent undervaluation of the goods by reason of which they became forfeited to the United States, and that the judgment is conclusive on that question and that alone. In this view we concur. So much as was said, therefore, by the learned judge in reference to the amount of duties payable on the merchandise must be construed as *obiter dictum* and of no binding force.

The main contention of the importer is that, inasmuch as more than one year had elapsed between the time of the entry of the merchandise and the date of the reliquidation as made by the surveyor, the surveyor was without authority to make it. This contention is based on the act of June 22, 1874 (ch. 391, sec. 21, 18 Stat., 190; U. S. Comp. Stat., 1901, p. 1986), which reads as follows:

SEC. 21. That whenever any goods, wares, and merchandise shall have been entered and passed free of duty, and whenever duties upon any imported goods, wares and merchandise shall have been liquidated and paid, *and such goods, wares and merchandise shall have been delivered to the owner, importer, agent, or consignee*, such entry and passage free of duty and such settlement of duties *shall, after the expiration of one year from the time of entry*, in the absence of fraud, and in the absence of protest by the owner, importer, agent or consignee, be final and conclusive upon all parties.

This section has been construed by the courts in the nature of a statute. It has often been held accordingly that there is no limit of time within which collectors may reliquidate an entry except the limitations prescribed by this section. Louisville Pillow Company *v.* United States (C. C. A., 6th circuit, 144 Fed. Rep., 386; T. D. 27260); also, Gandolfi *v.* United States (74 Fed. Rep., 549; 20 C. C. A., 652); United States *v.* Phelps (17 Blatch., 312); Knowles *v.* United States (122 Fed. Rep., 971).

The reliquidation therefore made by the surveyor on June 29, 1906, would supersede the original liquidation and be valid, provided

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it is not in violation of said section 21. It is observable, however, that this section applies only under the following circumstances, among others, first, that the merchandise should *have been delivered* to the owner, importer, agent, or consignee; second, that the entry must have been liquidated and the duties paid one year prior to such reliquidation; third, there must be an absence of fraud and the absence of protest by the owner, importer, agent, or consignee, pending and in force against such original liquidation.

The purpose of the statute would seem to be (other conditions being complied with) to permit all errors and mistakes lawfully capable of correction by the collector or surveyor of customs to be corrected by reliquidation, so long as the merchandise under consideration remains in the possession of the Government.

It appears from the evidence in this case that while the reliquidation was made more than one year from the time of entry the merchandise had not been finally delivered to the importer or his agent, but was in the possession, constructively at least, of the collector. This being the case, the said section 21 would be no bar to the reliquidation. This point was decided by the Board in the case of Paris, Allen & Co., G. A. 2411 (T. D. 14689), where it was held that the statute in question applies only to cases where the merchandise which is the subject of controversy has been delivered to the importer, and, further, that if it remains in the custody of the collector the statute does not apply. Note, also, Louisville Pillow Company *v* United States (144 Fed. Rep., 386; T. D. 27260), *supra*.

In the case of the Lace House *v*. United States (141 Fed. Rep., 869; T. D. 26970) it was held that the fact that goods have been seized for undervaluation does not deprive the consignee or owner of the right of reappraisement given in section 13 of the customs administrative act of 1890. The same principle would apply with like reason to the right of the collector or surveyor to call for a reappraisement in the case of goods seized for forfeiture. So in Gray *v*. United States (C. C. A., 113 Fed. Rep., 213; 51 C. C. A., Fed. Rep., 170) it was held that under the provisions of section 32 of the tariff act of 1897 the additional duties there provided for are payable except in "cases arising from a manifest clerical error irrespective of any question of fraudulent undervaluation on the part of the importer."

These cases are in conflict with the *dictum* of the circuit judge of Missouri before cited, and would justify the action of the collector in calling for a reappraisement of the goods under consideration.

The further suggestion is made in the brief of counsel that the General Appraiser who held the reappraisement of these paintings, and on the basis of whose decision the reliquidation was made by the surveyor, was without jurisdiction. The reason assigned for this is

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that section 13 of the customs administrative act of 1890 provides that such reappraisement may be called for only if the collector shall deem the reappraisement made by the local appraiser too low. It was held, however, by the circuit court of appeals, second circuit, in the case of United States *v.* Loeb (107 Fed. Rep., 692; 46 C. C. A., 562), that no collateral inquiry could be made in reference to the dissatisfaction of the collector as to a market value of imported merchandise as ascertained by the appraiser. The following language was used by the court:

> We are of opinion that it is the meaning of the section that the Board shall acquire jurisdiction by the transmission to them of the designated papers. They are thereby informed that jurisdiction is invoked and that a case is before them for decision.

A like principle would apply to a single General Appraiser. The transmission of the papers by the collector and the directing of the reappraisement of such merchandise by one of the General Appraisers would under this decision confer jurisdiction. This decision was followed by the Board in Dow's case, G. A. 6480 (T. D. 27717).

There is some evidence in this case tending to show that the surveyor required the brokers of the importer to make an entry of the merchandise. While there is no satisfactory evidence that the agents of the importer acted under duress in this matter, nevertheless every appraisement provided for in the customs administrative act of June 10, 1890, presupposes an entry and invoice in the case of imported merchandise except as otherwise provided by law. It has been held, accordingly, that where an importer or consignee declines to make an entry of such merchandise the Board will decline jurisdiction to pass on its classification. *In re* Lloyd Brothers, G. A. 6468 (T. D. 27680), following *In re* Chichester (48 Fed. Rep., 281). There is nothing in the objection based on this phase of the case.

The protest is overruled and the decision of the surveyor affirmed.

(T. D. 27888—G. A. 6537.)

Millinery articles, in chief value of feathers.

Articles composed of feathers, wire, cotton, and buckram, known in the millinery trade as "wings," "sweeps," "pompons," "hats," and "birds," wire being an important component in the construction and in forming and maintaining the shapes thereof, *Held* to be dutiable at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, as manufactures in part of metal not specially provided for.—G. A. 6467 (T. D. 27673); Hamano *v.* United States (Estee's Hawaiian Reps., 344; T. D. 24946) cited.

United States General Appraisers, New York, February 4, 1907.

In the matter of protests 208520, etc., of Berlinger, Brown & Meyer *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests was assessed for duty at the rate of 50 per

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cent ad valorem under the provisions of paragraph 425 of the tarifl act of 1897. Various claims are made for rates of duty other than that assessed.

The exhibits are described as "wings," "sweeps," "pompons," "hats," and "birds." All of them are made principally of feathers which concededly have been advanced by various processes beyond the crude state, but wire is also a component in the construction of all of the articles, cotton and buckram being components in some of them.

The question at issue is whether duty was properly assessed on the merchandise as feathers dressed, colored, or otherwise advanced or manufactured in any manner.

The evidence shows that each article is artificially constructed, and it is contended on behalf of protestants that since the only provisions for feathers in the existing tariff act are contained in paragraph 425, and these being only for feathers *crude*, *manufactured*, or *ornamental*, it was an unwarranted stretch of these provisions to classify thereunder articles made of feathers and other materials, even though feathers be in fact the component thereof of chief value.

In G. A. 6467 (T. D. 27673) the Board recently passed upon a similar question involving the classification of feather boas which were made by stringing feathers upon a cord, and the conclusion in that case was that since the boas were made of dressed feathers and cord, the feathers being the component material of chief value, and there being no special provision for manufactures of feathers, they were properly dutiable at the rate of 50 per cent ad valorem, as provided in paragraph 425, under the application of the provision of section 7 of said act, which reads:

> And on articles not enumerated, manufactured of two or more materials, duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material of chief value.

This case, however, presents a different situation. Like the boas, these articles are manufactures in chief value of feathers and not specially provided for, but it is not to be overlooked that metal wire plays an important part in their construction. The respective shapes of the articles are due almost, if not entirely, to the use of such wire, and this forces us to consider whether in the absence of any more specific provision such merchandise is not provided for in paragraph 193 which reads as follows:

> Articles or wares not specially provided for in this Act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

The merchandise is certainly not directly dutiable under paragraph 425, and we are of the opinion that neither of the provisions of sec-

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tion 7 may be invoked to make it so, since metal is a component part in the manufacture thereof. Hamano *v.* United States (Estee's Hawaiian Reps., 344; T. D. 24946).

One of the claims made is that the merchandise is dutiable at the rate of 45 per cent ad valorem under the provisions of said paragraph 193, and to that extent the protests are sustained. They are overruled in all other respects and the decisions of the collector are modified accordingly.

(T. D. 27889—G. A. 6538.)

Pyroxylin smokers' articles.

Smokers' articles of pyroxylin are more specifically enumerated in the provision in paragraph 459, for "all smokers' articles whatsoever, not specially provided for," than under that in paragraph 17 for "all compounds of pyroxylin, * * * if in finished or partly finished articles."—G. A. 5706 (T. D. 25379) and 140 Federal Reporter, 989 (T. D. 27065), followed.

United States General Appraisers, New York, February 5, 1907.

In the matter of protests 190,110, etc., of Knauth, Nachod & Kühne *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

LUNT, *General Appraiser:* The merchandise covered by these protests consists of pipe bits composed of pyroxylin and assessed for duty at the rate of 65 cents per pound and 25 per cent ad valorem as manufactures of pyroxylin under the provisions of paragraph 17 of the tariff act of 1897, and claimed to be dutiable at the rate of 60 per cent ad valorem as "all smokers' articles whatsoever, not specially provided for" under paragraph 459 of said act.

The articles admittedly are smokers' articles and we so find. The question therefore presented in this case is, which is more specific, the provision for articles of pyroxylin in paragraph 17, or that for "all smokers' articles whatsoever, not specially provided for" in paragraph 459.

In G. A. 5706 (T. D. 25379) this Board considered and determined an issue parallel to that here presented. Certain toys composed of pyroxylin assessed for duty under the provisions of paragraph 17 were claimed dutiable as toys not specially provided for under paragraph 418, and this Board held that the *eo nomine* provision for "toys" was more specific than the term "manufacture" of any specified material, and this decision was affirmed by the circuit court, eastern district of Pennsylvania, and the circuit court of appeals, United States *v.* Schwarz (140 Fed. Rep., 302; T. D. 26657 and 140 Fed. Rep., 989; T. D. 27065), and acquiesced in by the Treasury Department (T. D. 27144).

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On the authority of the decisions above cited, the Board, in Abstract 11261 (T. D. 27348), held merchandise similar to that here presented to be dutiable at 60 per cent ad valorem under paragraph 459 as "smokers' articles." On appeal to the circuit court for the southern district of New York the decision of the Board was affirmed (T. D. 27769), and later acquiesced in by the Treasury Department (T. D. 27819). In accordance with the finding of the court we hold the merchandise to be dutiable at 60 per cent ad valorem under paragraph 459 of said act and sustain the protests.

(T. D. 27890—G. A. 6539.)

Cotton damask articles.

Articles composed of cotton table damask held properly dutiable as "cotton table damask" at the rate of 40 per cent ad valorem under paragraph 321, tariff act of 1897.

United States General Appraisers, New York, February 5, 1907.

In the matter of protests 36337 *f*, etc., of D. Strachan *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise covered by these protests consists of table cloths, napkins, doilies, and other completed articles composed of cotton table damask. The collector assessed duty thereon at the rate of 45 per cent ad valorem under the provisions of paragraph 322 of the tariff act of 1897, which paragraph reads:

322. All manufactures of cotton not specially provided for in this Act, forty-five per centum ad valorem.

The protestants claim the merchandise properly dutiable at the rate of 40 per cent ad valorem under paragraph 321 of said act, which paragraph, so far as applicable, reads:

321. Cotton table damask, forty per centum ad valorem.

In G. A. 6010 (T. D. 26266) this issue was considered by the Board, and it was there held that the phrase "cotton table damask" had no well-known trade meaning embracing completed articles made of damask. This was in harmony with the decision of the circuit court for the southern district of New York on the same point. See Douglass & Berry *v.* United States (123 Fed. Rep., 993). The Board accordingly held such articles properly dutiable as countable cotton cloth.

On appeal to the circuit court this decision was affirmed in Dunham *v.* United States (T. D. 27026).

On appeal to the circuit court of appeals for the second circuit it was held that Congress used the phrase "cotton table damask" in

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its denominative sense, and that as such it included both damask in the piece and articles made of such damask. See Dunham *v.* United States (T. D. 27805), acquiesced in by the Treasury Department (T. D. 27841).

Following the ruling of the circuit court of appeals, we hold the merchandise in question properly dutiable at the rate of 40 per cent ad valorem under paragraph 321.

The protests are sustained, the decisions of the collector reversed, and reliquidation accordingly will follow.

(T. D. 27891—G. A. 6540.)

Calamine and other ores of zinc.

The term "calamine" in paragraph 514, tariff act of 1897, includes both the carbonate and the silicate of zinc; hence such ores of zinc are free of duty under the provision for calamine in said paragraph; "blende," or sulphide of zinc, not being a "metallic substance" as that term is employed in paragraph 183, is free of duty under paragraph 614 as a crude mineral, the circumstance that the large pieces of ore have been broken into smaller ones and the rock and dirt removed for economy and convenience in transportation not being sufficient to exclude the merchandise from classification under the provision in paragraph 614 for "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture."—Meyer *v.* Arthur (91 U. S., 570), Hempstead *v.* Thomas (122 Fed. Rep., 538), Schoenemann *v.* United States (119 Fed. Rep., 584), United States *v.* Merck (66 Fed. Rep., 251), Brauss *v.* United States (120 Fed. Rep., 1017), Roessler *v.* United States (94 Fed. Rep., 822), United States *v.* Hahn (91 Fed. Rep., 755), and G. A. 6036 (T. D. 26355), cited and followed.

United States General Appraisers, New York, February 5, 1907.

In the matter of protests 168712, etc., of Cockerill Zinc Company *et al.* against the assessment of duty by the surveyor of customs at the port of Kansas City.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* These protests involve the dutiable classification of certain zinc ores imported from Mexico. On some of the importations duty was assessed at the rate of 20 per cent ad valorem under the provisions of paragraph 183, tariff act of 1897, as metallic mineral substances in a crude state; on others at the rate of 1½ cents per pound on the lead contained therein under the provisions of paragraph 181, and on still others duty was taken at both these rates. The protests are not uniform in their claims, but it is sufficient for the purposes of this opinion to state that the contention of the importers is that the carbonates and silicates of zinc are free of duty under the provision in paragraph 514 for calamine, and that the others—the sulphides of zinc, or "blende"—are free under paragraph 614 as crude minerals. They concede that, even if the ores be held to fall within the description of the merchandise covered by either or both of these paragraphs, the lead contained in them should pay duty at the rate of 1½ cents per pound, nevertheless, under paragraph 181.

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The record in these cases is voluminous, consisting as it does, of the testimony of many witnesses on both sides, supplemented by references to and extracts from a large number of scientific authorities. We have before us also the report of counsel's oral argument, and, finally, briefs submitted on behalf of both litigants.

Two questions of the three that we have to consider are, first, does the term calamine as used in paragraph 514 of the tariff apply exclusively to the hydrous silicate of zinc, or does it cover both the silicates and the carbonates of zinc; second, does the provision in paragraph 183 for "metallic mineral substances in a crude state" cover zinc ores, or do they fall within the terms of paragraph 614 as "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture." A third question that incidentally arises in the course of this controversy is as to whether it is legal to assess, under the provisions of paragraph 181, the duty on the lead contents of an ore that is dutiable also under paragraph 183, but as the conclusion we have reached on the general issue makes it unnecessary to determine this point, we shall not pass upon it.

In respect to the first question the importers offered testimony to show that both the silicates and the carbonates of zinc are uniformly and generally recognized in the trade and commerce of this country as calamine. A number of witnesses on behalf of the Government refuted this claim and we are unable to find that there is any such uniform and general commercial understanding. As the word is a scientific one and is not familiarly used in ordinary speech it can be scarcely said to have a "popular" meaning, and hence the question narrows down to its scientific signification and it is on this the determination of the issue must rest. On this point a great mass of testimony, both oral and documentary, has been introduced by both sides, and it appears therefrom that mineralogists not only differ from metallurgists as to the purview of the term calamine, but they differ among themselves. While, according to the testimony of Professors Wheeler and Day, Dana is the generally accepted American authority on the nomenclature of zinc ores, and he holds that only the hydrous silicate of zinc is regarded properly as calamine, many other writers of authority apply the term to the carbonates as well. Prior to 1846 Dana, too, gave calamine the latter signification and when he, at that time, promulgated the distinction noted, he was followed and has since been followed most generally but not universally in this country. It appears, too, that German and English mineralogists still adhere to the practice that obtained in this country prior to 1846 and that they have not adopted Dana's system of nomenclature. Many publications introduced in evidence by the importers were objected to by

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the Government on the ground that they were foreign publications and that Congress is presumed to have enacted the tariff law according to domestic understanding, but we are of opinion that foreign publications, republished and circulated in this country, particularly those of a scientific character, are just as likely to fall into the hands of legislators as those wholly of American origin. Even of the latter class there are quite a number that support the contention sought to be established by the importers, namely, that calamine includes the carbonate as well as the silicate of zinc. Among such publications are the following:

Smithsonian Miscellaneous Collections. Washington. 1881.
The Metallic Wealth of the United States. Philadelphia. 1854.
The American Cyclopedia. Vol. III. New York. 1873.
Knight's American Mechanical Dictionary. New York. 1876.
Ure's Dictionary of Arts, Manufactures and Mines. New York. 1877.
Eggleston's Lectures at Columbia School of Mines. New York. 1878.
Zell's Popular Encyclopedia. Philadelphia. 1880.
Mines, Miners and Mining Interests in the United States. 1882.
A Catalogue of Minerals. By Albert H. Chester, Professor of Mineralogy in Hamilton College. New York. 1886.
Century Dictionary. New York. 1889.
People's Cyclopedia of Universal Knowledge. New York. 1891.
Worcester's Dictionary. 1891.
The International Encyclopedia. New York. 1892.
The Mineral Industry. Its Statistics, etc. Edited by Richard P. Rothwell. New York. 1892.
Johnson's Universal Cyclopedia. New York. 1897.
A Text-Book of Mineralogy. By Edward Salisbury Dana. New York. 1902.
The Metallurgy of Zinc and Cadmium. R. R. Ingalls. New York. 1903.
The New Standard Encyclopedia. New York. 1904.
The Encyclopedia Americana. New York. 1904.

It is not necessary to recite the names of the many foreign publications reprinted and published in this country, among them the Encyclopedia Britannica, 1888, which hold the same view as the American publications we have enumerated, namely, that calamine is both the silicate and carbonate of zinc.

In view of the facts that in the many zinc ores as found in nature the silicates and carbonates are commingled, that they are both of the same value and are used precisely for the same purpose, and that zinc ore is nowhere provided for by name, it is more than a conjecture that Congress, in legislating on the subject, intended to cover, by the provision for calamine, both the carbonate and the silicate of zinc. Calamine has been mentioned by name in the free list in every tariff act since 1792, except in the tariffs of 1846 and 1857, where it was made dutiable, but at no time and in none of the many tariff acts passed by Congress has zinc ore been provided for by name. If any presumption arises at all from these circumstances it is that Congress intended no duty on zinc ore, as such, rather than that by

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changing the designation for "*lapis calaminaris*" to calamine, a change which first appeared in the act of 1846, it was intended to charge certain kinds of zinc ore with duty. We do not see how, in view of the absence of any *eo nomine* provision for zinc ore, we can presume that Congress was guided by any particular authority of the many in circulation. It may at least be said that great doubt must result from this conflict among scientists and the issue might be decided in favor of the importers on this ground alone. But we are satisfied from all the evidence before us, both oral and printed, that the term "calamine" covers both the silicates and the carbonates of zinc. This is so when the word is regarded in its broadest sense, so far at least as tariff construction should go.

The Board reached the same conclusion in G. A. 6036 (T. D. 26355), which the Government seeks to have reversed on the new testimony offered here. That testimony tends to confirm our first view rather than to alter it.

As to the second question, namely, whether zinc ores should be classified under the provisions in paragraph 183 for "metallic mineral substances in a crude state," or under that in paragraph 614 for "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture," we are of opinion that the decision of the circuit court of appeals for the third circuit in Hempstead *v.* Thomas (122 Fed. Rep., 538) is decisive. It was there held that the provision in paragraph 183 quoted above applies only to that class of mineral substances in which metal appears in a free state, such as the ores of gold, silver, and copper, and not to mineral substances in which metal *qua* metal does not occur. Zinc as metal does not appear in the ores here in question; they are silicates and carbonates of zinc, and under the rule cited they are not metallic mineral substances. A process quite as elaborate as that described in Hempstead *v.* Thomas (*supra*) is necessary in order to extract the metal zinc from these ores.

Another case in point is Meyer *v.* Arthur (91 U. S., 570) wherein Mr. Justice Bradley said:

> So white lead, nitrate of lead, oxide of zinc, and dry or orange mineral are not minerals; they have no metallic qualities.

It is urged that these ores are excluded from the provisions of paragraph 614 by reason of the fact that, as appears from the evidence, after being dug from the mine the large pieces were crushed by hand or machinery and the fragments that contained no zinc ore were thrown away. The object of this proceeding is to avoid paying freight charges on rock and dirt. It has been held that while any labor bestowed on an article in a process of manufacture, the mere removal of foreign matter from a product of nature—the elimination of rocks and dirt from zinc ore, for instance—would not operate to

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take such ore out of paragraph 614, for it is still crude ore, not refined, ground, or manufactured. It is obvious that it is just as "crude" for purposes of classification under paragraph 614 as it would be under paragraph 183. It seems unnecessary to multiply authorities on this point, but we append a few for reference: Schoenemann *v.* United States (119 Fed. Rep., 584); United States *v.* Merck (66 Fed. Rep., 251); Brauss *v.* United States (120 Fed. Rep., 1017); Roessler *v.* United States (94 Fed. Rep., 822); United States *v.* Hahn (91 Fed. Rep., 755).

Our conclusion is that the carbonates and silicates of zinc are included within the meaning of the term calamine as used in paragraph 514, and that they are free of duty under said paragraph and also under paragraph 614, and that the sulphide of zinc is free under the paragraph last named as crude minerals, etc., subject, however, to the qualification that when lead is found in these ores duty shall be taken on the amount of lead contained therein as described in paragraph 181.

The decision of the collector in each case is modified accordingly.

(T. D. 27892.)

Abstracts of decisions of the Board of General Appraisers.

No. 14215.—Flags—Toys—Hairpins.—Protest 219742-22732 of Takito & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The Board held a portion of the goods, consisting of hairpins, to be dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers. It was further held that American flags, however diminutive they may be, are not commercially, commonly, or nationally regarded as playthings for children, and that they were properly treated by the collector as not included within said provision for toys. The Board also overruled the contention that certain Japanese figures were dutiable as manufactures of bone.

No. 14216.—Bone Charms—Clock Cases—Pincushions—Artificial Fruit.—Protest 216533-22735 of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The protest related (1) to bone watch charms with metal rings attached, classified as jewelry under paragraph 434, tariff act of 1897; (2) to wooden clock cases, and (3) to pincushions in imitation of fruit, classified as manufactures of silk under paragraph 391. The watch charms were held dutiable as manufactures of bone under paragraph 449, on the authority of G. A. 6262 (T. D. 26994). The clock cases were held to have been properly classified as such under paragraph 191. The pincushions were held dutiable either as classified or as artificial fruit under paragraph 425, which provided the same rate as said paragraph 391.

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No. 14217.—Toy Mirrors.—Protests 216457, etc., of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The protests were sustained on the authority of G. A. 5526 (T. D. 24869), relating to small folding mirrors held dutiable as toys.

No. 14218.—Glass Disks—Bombés.—Protests 226649, etc., of Hammel, Riglander & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6016 (T. D. 26286), relating to glass disks and bombés.

No. 14219.—Photograph Frames.—Protest 224660 of Strauss Brothers & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6442 (T. D. 27626), relating to photograph frames found to be composed in chief value of paper.

No. 14220.—Rolled Plate Glass.—Protest 218351 of Holbrook Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The merchandise was classified as rolled plate glass under paragraph 103, tariff act of 1897, and was claimed to be free of duty under paragraph 454, relating to glass disks for optical instruments, etc. Assessment affirmed.

No. 14221.—Decorated Earthenware.—Protest 148592 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The merchandise was held to have been properly classified as decorated earthenware under paragraph 95, tariff act of 1897.

No. 14222.—Glass Articles in Part of Metal.—Protest 217455 of Kipp Brothers Company against the assessment of duty by the surveyor of customs at the port of Indianapolis. Before Board 1 (Lund, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The protests related to baskets, flower stands, and other articles composed of metal and covered with glass, metal being the component of chief value. The importers contended that they had been improperly classified as decorated glassware under paragraph 100, tariff act of 1897, and were dutiable as manufactures of metal under paragraph 193. The Board found that these are not articles of glass decorated, but a combination of separable articles composed of glass and metal, respectively, and sustained the importers' contention.

No. 14223.—Bottles With Nickel-Plated Tops.—Protest 220038 of Warren Leather Goods Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The protests related to glass bottles and boxes with nickel-plated tops. A portion were found to be composed in chief value of metal and held dutiable under paragraph 193, tariff act of 1897, as manufactures of metal, as claimed by the importers.

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No. 14224.—Deception Wine Glasses.—Protest 223438 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

So-called deception wine glasses were classified as manufactures of glass under paragraph 112, tariff act of 1897, and claimed to be dutiable as toys under paragraph 418. Protest overruled.

No. 14225. — Spangled Articles. — Protest 132697 of Einstein, Wolff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified as spangled articles under paragraph 408, tariff act of 1897.

No. 14226.—Gelatin Spangles.—Protests 96514*f*, etc., of G. Hirsch's Sons *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of 141 Federal Reporter, 380 (T. D. 26400), relating to strung gelatin spangles.

No. 14227.—Hat Pins.—Protest 219910–22993 of G. W. Sheldon & Co. and protest 211946–22300 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinions by Sharretts, G. A.

Protests overruled on the authority of G. A. 6376 (T. D. 27390), relating to hat pins.

No. 14228.—Pins—Jewelry.—Protests 198064, etc., of R. H. Macy & Co. and protest 217999 of Zadek Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinions by Sharretts, G. A.

G. A. 6376 (T. D. 27390) followed, relating to pins and jewelry.

No. 14229.—Toy Necklaces.—Protest 223439 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6297 (T. D. 27156), relating to toy necklaces.

No. 14230.—Toy Necklaces.—Protest 202203 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14229 (*supra*).

No. 14231.—Toy Necklaces.—Protest 196849 of G. D. Gluck & Son against the assessment of duty by the collector of customs at the port of New York.

Same as No. 14229 (*supra*).

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No. 14232.—Toy Necklaces.—Protest 216817 of Hamburger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent).

Same as No. 14229 (*supra*).

No. 14233.—Jewelry—Silver Charms.—Protest 79318*f* of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The Board held silver charms to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14234.—Beaded Bags.—Protest 154854 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

The protest related to bags, which were held to have been properly classified as beaded articles under paragraph 408, tariff act of 1897.

No. 14235.—Ornaments—Jewelry—Pins.—Protest 205053 of Guthman, Solomons & Co., protests 1790*h*, etc., of Samstag & Hilder Brothers *et al.*, protests 28090*h*, etc., of Samstag & Hilder Brothers, and protests 29768*f*, etc., of Stern Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinions by Sharretts, G. A.

These decisions related to pins, ornaments, and other articles, classified as manufactures of jewelry, and to imitation pearl beads. The various contentions made as to these goods were disposed of by the Board in harmony with the following authorities: Abstract 5635 (T. D. 26248), G. A. 6130 (T. D. 26653), G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), G. A. 6383 (T. D. 27423), Steinhardt *v.* United States (113 Fed. Rep., 996), and Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316).

No. 14236.—Protests Abandoned.—Protests 179365, etc., of Morris European and American Express Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protests abandoned; overruled.

No. 14237.—Protest Abandoned.—Protest 209203 of New Orleans Terminal Company against the assessment of duty by the collector of customs at the port of New Orleans. Opinion by McClelland, G. A.

Same as No. 14236 (*supra*).

No. 14238.—Protests Unsupported.—Protests 121024, etc., of Samstag & Hilder Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 29, 1907. Opinion by Sharretts, G. A.

Protests overruled for want of merit.

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No. 14239.—PROTESTS UNSUPPORTED.—Protest 219739-22965 of G. W. Sheldon & Co. and protests 219907-22966, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14238 (*supra*).

No. 14240.—PROTEST UNSUPPORTED.—Protest 223418 of Joseph Horne Company against the assessment of duty by the surveyor of customs at the port of Pittsburg.

Same as No. 14238 (*supra*).

No. 14241.—PROTEST UNSUPPORTED.—Protest 222705 of Taylor Brothers Company against the assessment of duty by the collector of customs at the port of Rochester.

Same as No. 14238 (*supra*).

No. 14242.—MOLDERS' PATTERNS.—Protests 151537, etc., of Algoma Steel Company *et al.* against the assessment of duty by the collector of customs at the port of Marquette. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 30, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

No. 14243.—SCHMASCHEN GLOVES.—Protest 224591 of Swofford Brothers D. G. Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), January 30, 1907. Opinion by McClelland, G. A.

The goods were held dutiable as schmaschen gloves, as claimed by the importers.

No. 14244.—ARTIFICIAL FLOWERS ATTACHED TO PINS.—Protest 223442 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 30, 1907. Opinion by McClelland, G. A.

The protest related to merchandise classified as artificial flowers under paragraph 425, tariff act of 1897, consisting of imitation rosebuds of celluloid, mounted upon an artificial leaf and attached to a metal pin, evidently intended to be worn as a boutonnière. Following G. A. 2567 (T. D. 14938) and G. A. 2572 (T. D. 14942), the Board affirmed the assessment of duty.

No. 14245.—REEL STOCK.—Protest 223322 of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), January 30, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6485 (T. D. 27741), relating to reel stock.

No. 14246.—CHINESE SHOES.—Protest 212837 of Tuck High against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 30, 1907. Opinion by De Vries, G. A.

Protest sustained in part on the authority of G. A. 4547 (T. D. 21587), relating to Chinese shoes.

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No. 14247.—FIGURED COTTON CLOTH.—Protests 212801, etc., of W. H. Stiner & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 30, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 14248.—CHINESE VEGETABLES.—Protest 61475*b*–17621 of Quong Yuen & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Waite, G. A.

Protest sustained as to a portion of the goods on the authority of G. A. 6184 (T. D. 26812) and G. A. 6266 (T. D. 27019), relating to Chinese vegetables.

No. 14249.—EDIBLE DRIED FUNGUS.—Protests 134208, etc., of Sang Lung & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Waite, G. A.

The protests related to edible dried fungus, which, on the authority of G. A. 6184 (T. D. 26812), was held dutiable under paragraph 257, tariff act of 1897, as vegetables in their natural state.

No. 14250.—POTATO STARCH.—Protest 212415 of Hop Wo Lung & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Waite, G. A.

The merchandise consisted of potato starch, and was held to have been properly classified as starch under paragraph 285, tariff act of 1897.

No. 14251.—WASTE RUBBER—NEW CUTTINGS—CONFUSION OF GOODS.—Protest 212951 of B. Loewenthal & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907.

The merchandise was classified as waste under paragraph 463, tariff act of 1897, and was claimed to be free of duty under paragraph 579, relating to "old scrap or refuse india rubber which has been worn-out by use and is fit only for remanufacture."

SOMERVILLE, *General Appraiser:* * * * At the hearing two samples were produced, one by the Government, marked Exhibit No. 1, which consists of new rubber cuttings which clearly have not been worn-out by use, and does not therefore fall within said paragraph 579. The other exhibit, No. 2, furnished by the importers, consists of old scrap rubber, which has probably been worn-out by use and is fit only for manufacture. The importations would seem, therefore, to be composed of two kinds of rubber, one free of duty and the other dutiable as assessed by the collector. The onus is on the importer in a case of this kind, where there has been a confusion of free and dutiable goods, to show what proportion of the goods are free and what are dutiable. United States *v.* Ranlett (172 U. S., 133); *In re* Schmoll, G. A. 4624 (T. D. 21900). Examination of the testimony furnishes no facts which would justify us in undertaking to arrive at this proportion, and under the decisions above cited the whole importation was properly dutiable as assessed by the collector.

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No. 14252.—WASTE BAGGING.—Protest 205661 of Castle, Gotthell & Overton against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Somerville, G. A.

The protest related to waste bagging, which was held to have been properly classified as waste under paragraph 463, tariff act of 1897.

No. 14253.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 218003, etc., of American Cigar Company *et al.* and protests 202593, etc., of Havana Tobacco Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinions by Hay, G. A.

Protests overruled on the authority of G. A. 6520 (T. D. 27847), relating to the application of the preferential rate of duty provided in the treaty with Cuba.

No. 14254.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 199853, etc., of Havana Tobacco Company against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14253 (*supra*).

No. 14255.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 203805-21734, etc., of Havana American Company and protests 221941-23040, etc., of Havana-American Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14253 (*supra*).

No. 14256.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 198762, etc., of Havana Tobacco Company *et al.* against the assessment of duty by the collector of customs at the port of New Orleans.

Same as No. 14253 (*supra*).

No. 14257.—CUBAN TREATY—PREFERENTIAL DUTY.—Protests 192470, etc., of Herman Heyneman against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 14253 (*supra*).

No. 14258.—CUBAN TREATY—PREFERENTIAL DUTY.—Protest 192426½ of Havana-American Company against the assessment of duty by the collector of customs at the port of Tampa.

Same as No. 14253 (*supra*).

No. 14259.—PHILIPPINE PRODUCTS.—Protest 224214 of Isler & Guye against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 5226 (T. D. 24051), relating to Philippine products.

No. 14260.—UNUSUAL COVERINGS—CUMULATIVE DUTY.—Protests 190164, etc., of Tefft-Weller Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

The importers objected to the assessment of cumulative duty on unusual coverings. Protest overruled on the authority of T. D. 27833.

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No. 14261.—STEINS IN CHIEF VALUE OF METAL.—Protest 221031 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

A portion of the goods, consisting of steins with metal parts, was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897. G. A. 5948 (T. D. 26095) followed.

No. 14262.—SHRINKAGE OF HIDES.—Protest 223934 of T. S. Todd & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 6247 (T. D. 26956), relating to the shrinkage of hides.

No. 14263.—AUTOMOBILE REPAIRED.—Protest 216092 of W. R. Grace & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

The protest related to an automobile repaired abroad by the addition of a new body. The importers contended that it was entitled to admission free of duty under paragraph 504, tariff act of 1897, as household effects in use abroad not less than one year. On the authority of Hillhouse *v.* United States (T. D. 27831), the Board held that so much as was a new manufacture was dutiable and that the rest was free of duty.

No. 14264.—PETROLEUM PRODUCTS.—Protests 211001, etc., of F. C. Arnold *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Hay, G. A.

United States *v.* Downing (146 Fed. Rep., 56; T. D. 27025) and G. A. 6405 (T. D. 27507) followed, relating to petroleum products.

No. 14265.—CUBAN TREATY—PREFERENTIAL DUTY—PROTESTS FILED TOO LATE.—Protests 219584-22476, etc., of Havana-American Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinion by Somerville, G. A.

A part of the protests was dismissed because not filed within the time prescribed by law. The remainder were overruled on the authority of G. A. 6520 (T. D. 27847), relating to the application of the preferential rate of duty provided in the treaty with Cuba.

No. 14266.—PROTESTS ABANDONED.—Protests 216341, etc., of Block Light Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907.

Protests abandoned; overruled.

No. 14267.—PROTEST ABANDONED.—Protest 216445 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14266 (*supra*).

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No. 14268.—PROTEST ABANDONED.—Protest 214873 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14266 (*supra*).

No. 14269.—PROTEST UNSUPPORTED.—Protest 244155 of Sherwin-Williams Company against the assessment of duty by the collector of customs at the port of Cleveland. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 30, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14270.—PROTESTS UNSUPPORTED.—Protest 224074 of B. Cosesse and protests 203859, etc., of A. L. Crawford against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 30, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 14271.—PROTEST UNSUPPORTED.—Protest 213543 of F. Weiss against the assessment of duty by the collector of customs at the port of Juneau.

Same as No. 14270 (*supra*).

No. 14272.—PROTEST UNSUPPORTED.—Protest 223210 of Thos. Kenworthy's Sons against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14270 (*supra*).

No. 14273.—PROTEST UNSUPPORTED.—Protest 212331 of M. Tajima against the assessment of duty by the collector of customs at the port of Portland, Oreg. Opinion by Waite, G. A.

Same as No. 14270 (*supra*).

No. 14274.—PROTEST UNSUPPORTED.—Protest 215634 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Somerville, G. A.

Same as No. 14270 (*supra*).

No. 14275.—IMITATION PRECIOUS STONES—MEASUREMENT.—Protest 223706 of Holcombe & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6086 (T. D. 26541), relating to the measurement of imitation precious stones.

No. 14276.—RUBBER SPONGES.—Protests 211780, etc., of J. Lehmann, and protests 200736, etc., and protests 215473, etc., of Alfred H. Smith Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinions by Sharretts, G. A.

Protests overruled on the authority of G. A. 5944 (T. D. 26091), relating to rubber sponges.

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No. 14277.—Decorated Glassware.—Protests 189222, etc., and protest 211559 of M. J. Corbett & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinions by Sharretts, G. A.

The goods were held to have been properly classified as decorated glassware under paragraph 100, tariff act of 1897.

No. 14278.—Nail-Head Beads.—Protest 183328 of O. H. Blell against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinion by Sharretts, G. A.

The protest related to nail-head beads, similar to the two-hole beads referred to in G. A. 6380 (T. D. 27420). On the authority of that decision they were held to have been properly classified under the provision in paragraph 408, tariff act of 1897, for unstrung beads.

No. 14279.—Ornaments.—Protest 219299 of Krauss & Deitsch against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6374 (T. D. 27382), a portion of the goods, consisting of ornaments, was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897.

No. 14280.—Jewelry.—Protest 133355 of Albert Lorsch & Co. and protests 152636, etc., of Malhami & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinions by Sharretts, G. A.

The importers contended that the merchandise had been improperly classified as jewelry under paragraph 434, tariff act of 1897. Protests overruled.

No. 14281.—Granite Monuments.—Protests 169578, etc., of H. & A. Allan *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), January 31, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Baldwin *v.* United States (T. D. 27802), relating to granite monuments in sections.

No. 14282.—Machine Knives.—Protest 219354 of E. H. Bailey & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 13616 (T. D. 27734), relating to machine knives.

No. 14283.—Featherstitch Braids.—Protests 213718, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

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No. 14284.—FEATHERSTITCH BRAIDS.—Protest 228206 of J. M. Robinson, Norton & Co. against the assessment of duty by the surveyor of customs at the port of Louisville.

Same as No. 14283 (*supra*).

No. 14285.—FEATHERSTITCH BRAIDS.—Protest 218193 of Wm. H. Horstmann Company against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14283 (*supra*).

No. 14286.—FEATHERSTITCH BRAIDS.—Protest 223416 of Callender, McAuslan & Troup Company against the assessment of duty by the collector of customs at the port of Providence.

Same as No. 14283 (*supra*).

No. 14287.—REMANIT.—Protest 146660 of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of G. A. 6525 (T. D. 27865), relating to remanit.

No. 14288.—LACE WEARING APPAREL.—Protests 221754, etc., of Burr & Hardwick *et al.*, protests 214181, etc., of Einstein, Wolff & Co. *et al.*, protests 221500, etc., of Klauber, Horn & Co. *et al.*, protests 222005, etc., of Henry C. Rounds, and protest 222051 of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinions by Howell, G. A.

The goods were held to have been properly classified under the provisions for lace wearing apparel, etc., in paragraph 339, tariff act of 1897. Note G. A. 6290 (T. D. 27113).

No. 14289.—RENAISSANCE LACE.—Protest 222393, etc., of P. K. Wilson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6386 (T. D. 27441), relating to Renaissance lace articles.

No. 14290.—UNTRIMMED HATS.—Protest 207725-21157 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under the provision for untrimmed hats in paragraph 409, tariff act of 1897.

No. 14291.—UNTRIMMED HATS.—Protest 195626 of Rosenthal-Sloane Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14290 (*supra*).

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No. 14292.—Silk Veilings.—Protests 222006, etc., of Rusch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified as silk veilings under paragraph 390, tariff act of 1897.

No. 14293.—Toy Hairpins—Earthenware Toys.—Protest 216548-22729 of Takito & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by De Vries, G. A.

The protest related to earthenware figures of monkeys and to so-called hairpins, which the importers contended were dutiable under the provision for toys in paragraph 418, tariff act of 1897. This contention was sustained as to the hairpins, which are articles of very flimsy structure, composed mainly of cotton, wood, and paper, with artificial flowers attached to one end.

No. 14294.—Appliquéed Wearing Apparel of Artificial Silk and Cotton.—Protest 204659 of J. W. Frederick & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by De Vries, G. A.

The protest related to appliquéed wearing apparel composed of artificial silk and cotton, which the Board held to have been properly classified as appliquéed wearing apparel under paragraph 339 or 390, tariff act of 1897.

No. 14295.—Protest Insufficient.—Protest 164773 of Northern Commercial Company against the assessment of duty by the collector of customs at the port of Juneau. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by De Vries, G. A.

It appeared that the merchandise had been improperly classified, but as the importers failed to make the correct contention their protest was overruled.

No. 14296.—Toilets in Chief Value of Cotton.—Protest 218863 of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by De Vries, G. A.

The protest related to so-called toilets made of cotton and containing a small mirror, a writing pad, a comb, a bone pick, and a pencil, cotton being the component material of chief value. These articles were classified as manufactures of cotton under paragraph 322, tariff act of 1897, and were claimed to be dutiable under paragraph 403 as blank books. Assessment affirmed.

No. 14297.—Etamines —Protest 101048 of Mills & Gibb and protests 162184, etc., of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinions by De Vries, G. A.

The goods were classified as etamines under paragraph 339, tariff act of 1897, and were held dutiable as cotton cloth, as claimed by the importers. Note G. A. 5928 (T. D. 26062).

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No. 14298.—Figured Cotton Cloth.—Protests 229751, etc., of H. S. Beer *et al.*, protests 230286, etc., of Hoffman, Huber & Co., protests 230611, etc., of Hunter & Witcombe *et al.*, and protests 1454 *h*, etc., of Mills & Gibb *et al.* January 31, 1907.

Same as No. 14247 (*supra*).

No. 14299.—Manufactures of Cotton.—Protest 211013 of G. F. A. Bondies and protests 181924, etc., of Hunter & Witcombe *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinions by De Vries, G. A.

The importers contended that the merchandise had been improperly classified as composed in chief value of cotton. Protests overruled.

No. 14300.—Cipollina—Vegetables—Onions.—Protest 219720, etc., of A. Marano against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907.

The importer protested against the classification of the merchandise as onions under paragraph 249, tariff act of 1897, contending that it should have been classified under paragraph 251 as bulbs or bulbous roots, under paragraph 548 as drugs, under paragraph 617 as crude vegetable substances, under paragraph 656 as inedible bulbs or bulbous roots, under section 6 as unenumerated articles, or under paragraph 257 as vegetables in their natural state. The last of these contentions was sustained.

Waite, *General Appraiser:* The goods are invoiced as "cipolline," and the official sample shows them to be small bulbs, like an onion in appearance, but having neither the taste nor the odor of an onion. * * * While the record of this case is barren of information which would throw light upon the questions raised, bulbs of the same character were before the Board in the case of Francesco Marana (protest 95803*f*), decided November 26, 1902. There the position of the parties was in a measure reversed, the bulbs having been assessed by the collector under paragraph 251 as bulbs cultivated for their flowers, the importer claiming them to be dutiable as "onions" under paragraph 249, with alternative claims under paragraphs 548 and 656. In the absence of different evidence the record in that case will be helpful and will be applied in the present case. It was commented upon in the Board's decision as follows:

Both sides concede that the articles are, to some extent at least, cooked and eaten by Italians. They were imported by a dealer in food products, and there is no evidence from which we would be justified in finding that they are nonedible within the meaning of paragraphs 548 and 656. The claims under those paragraphs are accordingly overruled.

The investigations of the local appraiser indicated to him that the bulb was that of a variety of wild flower, found in swamps near the city of Rome, which bears upon a tall, grass-like spike a number of blue and white flowers. Opposed to this is the statement of the one witness for the importer who described the merchandise as "cipollina," and says that it is found about three feet under ground, and that no part of it appears above the ground. "Cipollina" is the diminutive for "cipolla," which is defined in Baretti's Italian Dictionary as follows: "1. Onion; 2. Bulb, bud formed under ground." The sample submitted at the hearing has neither the taste nor odor of the onion, although it resembles it closely in appearance.

We do not think the testimony is of sufficient weight to warrant a conclusion that the goods are onions. If they are vegetables used as food rather than flower buds, as classified, the enumeration of "vegetables in their natural state," in paragraph 257, would apply to prevent their classification as onions by similitude. In this view of the case it is unnecessary to inquire if the collector's action be correct. The protest must be overruled on the evidence presented.

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If the goods can not be classified as flower bulbs, dutiable at 25 per cent ad valorem under paragraph 251, and this appears doubtful from the evidence, it would seem that they ought to be classified either as "vegetables in their natural state," under paragraph 257, at the same rate of duty, or be admitted free as crude vegetable substances under paragraph 617. As they are cooked and eaten by Italians, we incline to the view that they should be assessed under paragraph 257, a paragraph not mentioned in the former protest.

No. 14301.—POULTRY—GEESE.—Protest 216464 of W. Gordon & Co. against the assessment of duty by the collector of customs at the port of Bangor. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

The importers objected to the classification of geese as poultry under paragraph 278, tariff act of 1897. Protest overruled for want of evidence.

No. 14302.—MARZIPAN—CONFECTIONERY.—Protest 208052 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of G. A. 4944 (T. D. 23115), relating to marzipan.

No. 14303.—SOY.—Protest 186751 of M. Furuya Company against the assessment of duty by the collector of customs at the port of Port Townsend. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

The importers objected to the classification of soy under paragraph 241, tariff act of 1897. Protest overruled. Note Abstract 12761 (T. D. 27591) and Abstract 13636 (T. D. 27745).

No. 14304.—EDIBLE DRIED FUNGUS.—Protest 162891, etc., of Wing Wo Chong *et al.* against the assessment of duty by the collector of customs at the port of New York. January 31, 1907.

Same as No. 14249 (*supra*).

No. 14305.—EDIBLE DRIED FUNGUS.—Protests 173827-20212, etc., of Hip Lung & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. January 31, 1907.

Same as No. 14249 (*supra*).

No. 14306.—EDIBLE DRIED FUNGUS.—Protest 61869*b* of Kwong Chong Lung Company against the assessment of duty by the collector of customs at the port of Honolulu. January 31, 1907.

Same as No. 14249 (*supra*).

No. 14307.—DRIED FUNGUS—LICHENS—VEGETABLES.—Protest 103133, etc., of Sam Sing *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

The goods consisted of edible dried fungus and lichens which the Board held dutiable as vegetables in their natural state under paragraph 257, tariff act of 1897, as claimed by the importers. G. A. 6184 (T. D. 26812) followed.

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No. 14308.—WEIGHT OF ONIONS.—Protests 220512, etc., of W. M. French against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Hills Brothers Company *v.* United States (T. D. 27750), relating to the weight of onions.

No. 14309.—WEIGHT OF ONIONS.—Protests 165132, etc., of J. W. Hampton, Jr., & Co. *et al.* against the assessment of the duty by the collector of customs at the port of Philadelphia.

Same as No. 14308 (*supra*).

No. 14310.—TRUFFLES.—Protest 209589 of Meyer & Lange against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Abstract 13776 (T. D. 27785), relating to truffles.

No. 14311.—WOOD PULP—COUNTERVAILING DUTY.—Protests 135789, etc., of John Reeve against the assessment of duty by the collector of customs at the port of Newport, Vt. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Somerville, G. A.

G. A. 5592 (T. D. 25035) and G. A. 6445 (T. D. 27629) followed, relating to the assessment of a countervailing duty on wood pulp.

No. 14312.—WOOD PULP—COUNTERVAILING DUTY.—Protest 219709 of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington, Vt.

Same as No. 14311 (*supra*).

No. 14313.—MACHINERY IN BOND FOR REPAIRS.—Protest 209910 of W. S. Cameron against the assessment of duty by the collector of customs at the port of Newport, Vt. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Somerville, G. A.

The protest related to machinery entered for repairs and exportation under the provisions of section 19, tariff act of 1897. The consignee having failed to redeliver the merchandise to the collector for exportation in accordance with the provisions of said section 19 and of articles 609–12, Customs Regulations of 1899, the protest was overruled, the Board holding that a strict compliance with the regulations was essential.

No. 14314.—LINEN THREAD WASTE—PAPER STOCK.—Protest 212940 of Jackson Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907. Opinion by Somerville, G. A.

Linen thread waste was held free of duty under paragraph 632, tariff act of 1897, as paper stock, as claimed by the importers. G. A. 5719 (T. D. 25422) followed.

No. 14315.—PROTESTS ABANDONED.—Protests 136888, etc., of John Menke & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), January 31, 1907. Opinion by Howell, G. A.

Protests abandoned; overruled.

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No. 14316.—PROTEST ABANDONED.—Protest 223445 of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14315 (*supra*).

No. 14317.—PROTEST ABANDONED.—Protest 219172 of Pitt & Scott (Limited). Opinion by Fischer, G. A.

Same as No. 14315 (*supra*).

No. 14318.—PROTEST ABANDONED.—Protest 163331 of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Fischer, G. A.

Same as No. 14315 (*supra*).

No. 14319.—PROTESTS ABANDONED.—Protests 210927, etc., of Ahles & Raymond *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), January 31, 1907.

Protests abandoned; overruled.

No. 14320.—PROTESTS ABANDONED.—Protests 204326, etc., of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington.

Same as No. 14319 (*supra*).

No. 14321.—PROTESTS ABANDONED.—Protests 221951-23338, etc., of Pollock & Muller *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14319 (*supra*).

No. 14322.—PROTESTS ABANDONED.—Protests 193508, etc., of E. Dillingham, against the assessment of duty by the collector of customs at the port of Ogdensburg.

Same as No. 14319 (*supra*).

No. 14323.—PROTESTS ABANDONED.—Protests 210995, etc., of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Plattsburg.

Same as No. 14319 (*supra*).

No. 14324.—PROTESTS UNSUPPORTED.—Protest 178774 of L. Metzger & Co., protests 216764, etc., of F. Woolworth & Co., and protest 181095 of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. January 31, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 14325.—PROTEST UNSUPPORTED.—Protest 214187 of Henry Glass & Co. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by De Vries, G. A.

Same as No. 14324 (*supra*).

No. 14326.—PROTESTS UNSUPPORTED.—Protests 214683, etc., of S. Stern *et al.* January 31, 1907. Opinion by Somerville, G. A.

Same as No. 14270 (*supra*).

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No. 14327.—CHRISTMAS-TREE BALLS—STEEL WATCH CHAINS.—Protest 155842 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, glass balls for Christmas trees were held dutiable as toys under paragraph 418, tariff act of 1897, and steel watch chains were held not to be jewelry, but dutiable as manufactures of metal under paragraph 193. Note G. A. 6349 (T. D. 27805).

No. 14328.—BOTTLES WITH CUT-GLASS STOPPERS.—Protest 216360 of George E. Evans Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Utard *v.* United States (128 Fed. Rep., 422; T. D. 25115), relating to bottles with cut-glass stoppers.

No. 14329.—THERMOMETERS FOR CALENDARS.—Protest 219917 of American Pearl Manufacturing Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

The protest related to small glass thermometers mounted upon cardboard, upon which is printed a scale of degrees, being intended for use in connection with calendars. They were classified as manufactures of glass under paragraph 112, tariff act of 1897, and were claimed to be dutiable as manufactures of paper under paragraph 407. Protest overruled.

No. 14330.—BEADED FRINGES.—Protest 214601 of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Fringes composed chiefly of glass beads were held to have been properly classified under paragraph 408, tariff act of 1897, relating to beaded articles.

No. 14331.—PYROXYLIN TOYS.—Protest 201440 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of 140 Federal Reporter, 989 (T. D. 27065), relating to pyroxylin toys.

No. 14332.—VIOLIN BOWS.—Protest 219741-22737 of Wm. Tonk & Bros. Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

The importers contended that violin bows were dutiable as toys. Protest overruled on the authority of Abstract 2750 (T. D. 25538), relating to violin bows.

No. 14333.—MOTHER-OF-PEARL SLABS.—Protests 197157, etc., of Adolph Kastor & Bros. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6515 (T. D. 27823), relating to mother-of-pearl slabs.

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No. 14334.—NAIL-HEAD BEADS.—Protests 208336, etc., of A. & H. Veith. February 1, 1907.

Same as No. 14278 (*supra*).

No. 14335.—TOY NECKLACES.—Protest 224460 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York. February 1, 1907.

Same as No. 14229 (*supra*).

No. 14336.—PINS.—Protests 218301, etc., of A. Bader & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6376 (T. D. 27390), relating to pins.

No. 14337.—PINS—ORNAMENTS.—Protest 40620*b*-14383 of Gage Brothers & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

G. A. 6130 (T. D. 26653) and G. A. 6376 (T. D. 27390) followed, relating to pins and ornaments.

No. 14338.—BELTS — JEWELRY. — Protest 39029*b* of Victor Jonest against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

The protest related to belts of artistic design, containing imitation precious stones in metal settings. These articles were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14339. — IMITATION PRECIOUS STONES.—Protests 139369, etc., of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

A portion of the goods were held dutiable as precious stones under paragraph 435, tariff act of 1897, and another portion consisting of pins as manufactures of glass. Note G. A. 6376 (T. D. 27390).

No. 14340.—BUCKLES—PURSES.—Protest 5827*h* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6374 (T. D. 27382) and Tiffany *v.* United (131 Fed. Rep., 398; T. D. 25316), the Board held the merchandise, consisting of steel buckles and metal purses, to have been improperly classified as jewelry, and to be dutiable as manufactures of metal, as claimed by the importers.

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No. 14341.—ORNAMENTS.—Protest 19987 *h* of Leon Rheims Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6130 (T. D. 26653), relating to ornaments.

No. 14342.—CUT LEATHER.—Protests 224152, etc., of Evan Arthur Leigh against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts and McClelland, General Appraisers), February 1, 1907.

The importer contended that the merchandise had been improperly subjected to the proviso in paragraph 438, tariff act of 1897, prescribing that "leather cut into shoe uppers or vamps or other forms suitable for conversion into manufactured articles, shall be classified as manufactures of leather and pay duty accordingly." It was claimed that the provisions of the first part of said paragraph relating to leather of various kinds should have been applied. Protests sustained.

McCLELLAND, *General Appraiser:* The merchandise to which these protests relate is described on the invoices as "hides for rubbers," and range in sizes from 25 by 19¼ inches to 65 by 21¼ inches. The appraiser returned the same as "leather cut to certain dimensions which were correctly described on the invoice." * * * It is contended by the Government that the leather in question has been cut into shape and split to thickness for a specific purpose, and on that theory duty was assessed. There is nothing in the record, however, to support this contention. On the contrary, it is shown that nothing has been done to the leather except such splitting and trimming as is usual, and that such treatment has not resulted in the same being cut into forms suitable for conversion into manufactured articles within the meaning of the words contained in the proviso at the end of paragraph 438.

No. 14343.—GRANITE MONUMENTS.—Protest 182893 of Chas. Ed. Heise & Bro. against the assessment of duty by the collector of customs at the port of San Francisco. February 1, 1907.

Same as No. 14281 (*supra*).

No. 14344.—WOOL ON THE SKIN.—Protest 221971 of John V. A. Cattus against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6333 (T. D. 27258), relating to wool on the skin.

No. 14345.—JACQUARD FIGURED SILKS.—Protest 46527 *b*-15062 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 1, 1907. Opinion by Howell, G. A.

The protest was sustained as to a portion of the merchandise on the authority of G. A. 5000 (T. D. 23309), relating to Jacquard figured silks.

No. 14346.—METAL PURSES.—Protests 224566, etc., of Munzer Leather Goods Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 1, 1907. Opinion by Howell, G. A.

Purses, which were classified as composed in chief value of silk, were held dutiable as manufactures of metal, as claimed by the importers.

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No. 14347.—FIGURED COTTON CLOTH.—Protests 231136, etc., of Sherman & Sons Company *et al.* and protests 231409, etc., of Albert A. White *et al.* February 1, 1907.

Same as No. 14247 (*supra*).

No. 14348.—CYCAS STEMS—NURSERY STOCK.—Protest 216225 of Alex. Murphy & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Waite, G. A.

Cycas stems, classified as nursery stock under paragraph 252, tariff act of 1897, were claimed to be free of duty under paragraph 552, as palm leaves in their natural state. Protest overruled.

No. 14349.—WEIGHT OF ONIONS.—Protests 163397-19831, etc., of E. L. Hasler Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Hills Brothers Company *v.* United States (T. D. 27750), relating to the weight of onions.

No. 14350.—SEED.—Protest 213879, etc., of J. L. Hopkins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Abstract 12933 (T. D. 27636), relating to pumpkin seed.

No. 14351.—SUGAR—COUNTERVAILING DUTY.—Protests 51168 *b*, etc., of Franklin Sugar Refining Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of Franklin Sugar Refining Company *v.* United States (142 Fed. Rep., 876; T. D. 27027), relating to the countervailing duty on sugar.

No. 14352.—CUBAN PRODUCTS.—Protest 225327 of Empire Leaf Tobacco Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

On the authority of G. A. 4932 (T. D. 23087), the Board held that Cuba is a foreign country within the meaning of the tariff. Protest overruled.

No. 14353.—FRUIT IN SPIRITS—RECIPROCITY.—Protests 98209*f*, etc., of Reiss & Brady *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 6331 (T. D. 27256), relating to the application of the reciprocal commercial agreement with France with reference to spirits in which fruit is preserved.

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No. 14354.—FRUIT IN MARASCHINO—BOTTLE CHARGES.—Protests 211879, etc., of Githens, Rexsamer & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 4503 (T. D. 21428) and G. A. 5290 (T. D. 24262), relating, respectively, to the classification of cherries in maraschino and to the duty on charges on filled bottles.

No. 14355.—GLUE STOCK.—Protest 216346 of H. & A. Chapal Frères & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

The merchandise was classified as fur waste and held to be free of duty as glue stock under paragraph 572, tariff act of 1897. Abstract 11999 (T. D. 27458) followed.

No. 14356.—TARE—COTTON YARN.—Protest 211801, etc., of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Somerville, G. A.

The protests related to cotton yarn on cops contained in paper envelopes. In assessing duty no allowance was made for tare. The Board held that an allowance of 4 per cent for the paper covers should have been made, as claimed by the importers.

No. 14357.—CLERICAL ERROR.—Protest 216423 of E. P. Stahel & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Hay, G. A.

It appeared that by clerical error an invoice item for cartons had been stated without any notation of the fact that the cost of the cartons had been included in the invoice price of the goods. The Board sustained the importers' contention that said item should not be added.

No. 14358.—MAGNESIA ARTICLES.—Protest 214530 of Goldschmidt Thermit Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of Abstract 12943 (T. D. 27863), relating to magnesia articles.

No. 14359.—PROTESTS ABANDONED.—Protests 42044*f*, etc., of Bloomingdale Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinion by McClelland, G. A.

Protests abandoned; overruled

No. 14360.—PROTESTS ABANDONED.—Protests 64481*f*, etc., of B. Altman & Co. *et al.* February 1, 1907.

Same as No. 14315 (*supra*).

No. 14361.—PROTESTS ABANDONED.—Protests 72603*f*, etc., of Samstag & Hilder Brothers *et al.* February 1, 1907.

Same as No. 14315 (*supra*).

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No. 14362.—PROTEST ABANDONED.—Protest 54557*b* of J. B. Heckendorn against the assessment of duty by the collector of customs at the port of Milwaukee. February 1, 1907.

Same as No. 14319 (*supra*).

No. 14363.—PROTEST ABANDONED.—Protest 213583 of Oceanic Steamship Company against the assessment of duty by the collector of customs at the port of Honolulu. Opinion by Hay, G. A.

Same as No. 14319 (*supra*).

No. 14364.—PROTESTS UNSUPPORTED.—Protests 168904, etc., of John D. Gluck & Son and protest 189754 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 1, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 14365.—PROTESTS UNSUPPORTED.—Protests 223031, etc., of F. Schmidt & Co. Opinion by McClelland, G. A.

Same as No. 14364 (*supra*).

No. 14366.—PROTESTS UNSUPPORTED.—Protest 223974 of Johnson & Faulkner, protests 221789, etc., and protest 223275 of Felix J. McCosker, protests 61586*f* and 122802 of H. Robinson, and protests 223298, etc., of Scheuer & Co. *et al.* Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinions by Howell, G. A.

Same as No. 14364 (*supra*).

No. 14367.—PROTEST UNSUPPORTED.—Protest 223670 of E. B. Estes & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 1, 1907. Opinion by Hay, G. A.

Protest overruled for want of merit.

No. 14368.—PROTEST UNSUPPORTED.—Protest 223333 of Central Vermont Railway Company against the assessment of duty by the collector of customs at the port of St. Albans.

Same as No. 14367 (*supra*).

No. 14369.—PROTEST UNSUPPORTED.—Protest 203399 of Fook Hong Lung against the assessment of duty by the collector of customs at the port of Portland, Oreg. Opinion by Waite, G. A.

Same as No. 14367 (*supra*).

No. 14370.—PROTESTS UNSUPPORTED.—Protests 182894, etc., of Iwakami & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Opinion by Waite, G. A.

Same as No. 14367 (*supra*).

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TREASURY DEPARTMENT, *February 6, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 27893.)

Apricot kernels.

UNITED STATES *v.* SPENCER.

U. S. Circuit Court of Appeals, Second Circuit. January 18, 1907. No. 141 (suit 3973).

APRICOT KERNELS—NUTS.

Apricot kernels are dutiable as "nuts * * * not specially provided for," under paragraph 272, tariff act of 1897, and not as almonds by similitude under paragraph 269.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 146 Federal Reporter, 112 (T. D. 27184), reversing a decision of the Board of United States General Appraisers, Abstract 5376 (T. D. 26190), which had affirmed the assessment of duty by the collector of customs at the port of New York on importations by Spencer & Co.

The Government contended that the circuit court erred in holding apricot kernels dutiable as "nuts * * * not specially provided for," under paragraph 272, tariff act of 1897, and that the decision of the Board, upholding the classification of the articles as almonds by similitude under paragraph 269, should have been affirmed.

J. Osgood Nichols, assistant United States attorney, for the United States.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

Before WALLACE, LACOMBE, and TOWNSEND, Circuit Judges.

PER CURIAM: Decision affirmed.

(T. D. 27894.)

Lace articles.

GOLDENBERG *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 28, 1907. Suit 4194.

LACE ARTICLES.

The provision for "articles made * * * of lace," in paragraph 339, tariff act of 1897, is not limited to articles made from lace bought and sold by the yard, but includes also such as are made by sewing together pieces of lace produced in shapes designed to be used in making the articles.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see G. A. 6290 (T. D. 27113), which affirmed the assessment of duty by the collector of customs at the port of New York on importations by Goldenberg Brothers & Co., consisting of collars which were classified under the provision in paragraph 339, tariff act of 1897, for "articles made wholly or in part of lace."

Evidence introduced before the Board as to the character of the goods and the method of manufacturing them showed "that thread is placed in lace machines which produces pieces of lace in shapes designed to be used in making collars, and that the collars are made by sewing several of these pieces together." Following the decision of the circuit court of appeals for the second circuit in United States *v.* Van Blankensteyn (91 Fed. Rep., 977), the Board held that the articles were properly classified as made of lace. Note Mills *v.* Robertson (147 Fed. Rep., 634; T. D. 27509).

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The importers, in their assignment of errors, asserted that the term "lace" means commercially a "fabrication or article sold by the yard, with one edge straight, the other scolloped, or both edges straight," and does not include articles "made in accordance with a design executed by means of a thread placed in a machine."

Walter E. Hampton (*James W. Purdy, jr.*, of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The merchandise in question, consisting of cotton lace collars, was classified for duty as articles made of lace under the provisions of paragraph 339 of the tariff act of 1897. The importer claims that the goods should have been appraised under the provisions of paragraph 314. It would serve no useful purpose to again discuss the reasons for the conclusion that the articles of wearing apparel in question are made wholly or in part of lace. See Goldenberg Brothers & Co. *v.* United States (124 Fed. Rep., 1003; affirmed 130 Fed. Rep., 108; T. D. 25220); petition for certiorari denied (195 U. S., 634; T. D. 25901). Judge Lacombe, writing for the circuit court of appeals, has fully and plainly covered the principal points relied upon. It is true that in the former case it was conceded at the hearing that the articles were wholly or in part of lace composed of cotton, while now it is vehemently insisted that such articles are made by hand or machine from cotton thread, usually in pieces which are sewn together to finish the article. The concession mentioned is not thought to have been controlling. That such lace neckwear, to come within the provisions of paragrah 339, must have been made up from lace that is bought and sold by the yard, is thought wholly untenable. The importers' restricted definition of the term "lace" is too narrow; and, moreover, it is reasonably clear that Congress intended to impose a higher rate of duty upon articles such as these in controversy than upon wearing apparel of the class described in the paragraph under which the importer claims the articles should have been assessed for duty. The case of Fleet *v.* United States (148 Fed. Rep., 335; T. D. 26824) is readily distinguishable. In that case the articles of fur were sewn together simply for convenience and safety, and not, as here, to make a completed useful article.

I concur in the views of the Board as expressed in their opinion and affirm their decision.

NOTE.—In this case an appeal will be taken to the circuit court of appeals, second circuit.

(T. D. 27895.)

Pro forma invoice.

UNITED STATES *v.* MULLER.

U. S. Circuit Court, Southern District of New York. January 28, 1907. Suit 4417.

PRO FORMA INVOICE—DUTIABLE VALUE—ILLEGAL APPRAISEMENT.

Merchandise was entered on a pro forma invoice, the value therein stated being approved by the appraiser on appraisal made before the production of the consular invoice. It appeared that through clerical error the value in the pro forma invoice had been stated too high; that the appraiser in approving that invoice merely determined that the value there given was sufficiently high, without fixing a positive price; and that the value given in the consular invoice was correct. *Held* that there had been no valid appraisement, and that the value stated in the latter invoice should be taken as the dutiable value.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 12452 (T. D. 27550), sustained the protest of Muller, Mac Lean & Co. against the assessment of duty by the collector of

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customs at the port of New York. Note T. D. 27554, directing the application for review. The opinion filed by the Board reads as follows:

SOMERVILLE, *General Appraiser:* The merchandise consists of mica, which was entered upon a pro forma invoice erroneously stating that the value of the mica was $632. The subsequent production of the consular invoice showed that the proper value of the mica was 636.10 rupees, equal to about $204. The collector liquidated the entry on the valuation stated in the pro forma invoice. The importers claim that the liquidation should be based upon the value stated in the consular invoice.

The protest is sustained on the authority of the case decided by the Board in G. A. 6126 (T. D. 26636) and also of the case of the Commercial Cable Company, G. A. 5856 (T. D. 25801), which was affirmed by the circuit court for the southern district of New York in United States *v.* Commercial Cable Company, reported by the Treasury Department in T. D. 26494 (141 Fed. Rep., 478). The protest is sustained and the collector's decision reversed.

J. Osgood Nichols, assistant United States attorney, for the United States

Kammerlohr & Duffy (*John G. Duffy* of counsel), for the importers.

HAZEL, *District Judge:* The merchandise (mica) was assessed for duty by the collector at its entry value indicated in the pro forma invoice. Subsequently, the importer claimed that a clerical mistake had been made and that according to the consular invoice the mica should have been valued at the sum of $204 instead of the sum of $632 as shown in the pro forma invoice. There was no reappraisement of the merchandise by the collector, neither did the importer give notice of dissatisfaction upon which a reappraisement could have been had in conformity with section 13 of the tariff act of 1897. Therefore, the Government contends that the importer can not now be heard to claim a less valuation of the merchandise. It is urged, however, by the importer that there was no valid appraisement of the mica, that the valuation as a result of appraisement never became final and conclusive, and, therefore, no reappraisement upon notice of the importer was necessary. By the provisions of section 10 of the act of June 10, 1890, it was the duty of the appraiser by all reasonable ways and means in his power—

To ascertain, estimate, and appraise (any invoice or affidavit thereto, or statement of cost, or of cost of production, to the contrary, notwithstanding), the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported.

There is no dispute as to the value of the merchandise; for the Government practically concedes that a clerical mistake was made and that the consular invoice correctly stated the value of the same. The examiner inspected the shipment, but I incline to the opinion that an appraisement such as contemplated by the tariff act was not made. The examiner evidently based his appraisement largely if not altogether upon the pro forma invoice, the value of the goods as therein stated, and not with the degree of care and the exercise of power that is required by the act. Upon that point, the testimony of the witness Hyder, the official examiner in the appraisers' office, after stating that he inspected and appraised the goods, is as follows:

Q. When you say that you appraised it, do you mean that you determined its value from such information as you had apart from the pro forma invoice?—A. Yes, sir—that is, I determined the value was sufficient.

Q. You did not inquire whether the value was too high?—A. No, sir.

Q. So when you say you appraised you mean simply that you were satisfied that the pro forma invoice value was not too low?—A. Yes, not too low.

Q. You did not fix the market value of the merchandise?—A. No, sir; did not fix a a positive price.

The contention of the Government that the appraisement of the merchandise as made is final and conclusive, has no application to a case where the appraisement was evidently made contrary to law and not within the provisions of the tariff act. United States *v.* Beer (T. D. 27753). See, also, United States *v.* Commercial Cable Company, G. A. 5856 (T. D. 25801), affirmed by the circuit court for this district, reported in T. D. 26494 (141 Fed. Rep., 478). And the distinction made by the United States attorney

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is inapplicable to a case where no valid appraisement has been made. It sufficiently appears that there was error in relation to the value of the merchandise; and as the bona fides of the importers is unquestioned, the action of the Board of General Appraisers in reversing the collector was proper and must be affirmed.

(T. D. 27896.)

Drawplates and wortles.

UNITED STATES *v.* C. NEWMAN WIRE COMPANY.

U. S. Circuit Court, Southern District of New York. January 28, 1907. Suit 4130.

STEEL PLATES—DRAWPLATES—WORTLES.

The provision for steel plates in paragraph 135, tariff act of 1897, relating to "plates and steel in all forms and shapes," was intended to include only plates that have not been manufactured into some other completed commercial article. Drawplates and wortles, which are practically completed articles made from steel bars or plates and used in wire drawing, are not included therein but are dutiable as manufactures of metal under paragraph 193.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see G. A. 6157 (T. D. 26731), reversing the assessment of duty by the collector of customs at the port of New York on the importations in controversy. Note T. D. 26757, directing the application for review.

J. Osgood Nichols, assistant United States attorney, for the United States.

Everit Brown for the importers.

HAZEL, *District Judge:* The merchandise in question, consisting of drawplates and wortles, was returned by the appraiser as manufactures of metal. Duty was accordingly assessed thereon by the collector at 45 per cent ad valorem under paragraph 193 of the tariff act approved July 24, 1897, which provides for "articles or wares not specially provided for in this Act, composed wholly or in part of * * * steel." The importers protested, urging before the Board, among other things, that the merchandise was dutiable under paragraph 135 as plates or steel in all forms and shapes. The Board overruled the classification of the collector and held the merchandise dutiable, as claimed, under paragraph 135, upon the authorities of Buehne *v.* United States (140 Fed. Rep., 772; T. D. 26452), Morris *v.* United States (140 Fed. Rep., 774; T. D. 25183), and the ruling of the Board in F. L. Smidth & Co., G. A. 5682 (T. D. 25296). The Government has appealed to this court for a review of the decision of the Board.

The single claim now urged by the importers is that the articles are dutiable under paragraph 135, as steel plates, at the rate per pound therein specified; the earlier claim urged before the Board, that the drawplates and wortles relate to steel "in all forms or shapes," having been abandoned. The Government contends that the drawplates and wortles are manufactured from bars of steel, that the term "plate" as applied to the article is a misnomer, it having originated in shop phraseology, and particularly that paragraph 135 contemplates the payment of a duty upon steel in its crude and unfinished forms and shapes only and not upon finished articles manufactured therefrom.

The evidence before this court shows that the merchandise in question is manufactured from steel bars; that a drawplate used in making steel wire ordinarily consists of a piece of steel about 6 inches wide, 10 or 12 inches long, and 1¼ inches thick, one of the ends being elongated or drawn out to form a handle; and a series of holes corresponding in size to the wire to be drawn through them are drilled into the plates by hand or machinery. The wortles are bars of steel of different lengths, about 1¼ inches wide and 1¼ inches deep, having holes suitable for wire drawing.

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The decision of Judge Lacombe in United States *v.* Meier (136 Fed. Rep., 764; T. D. 25973) cited in the opinion of General Appraiser Fischer in G. A. 6406 (T. D. 27536), would seem to be applicable to the case under consideration. I quote:

Although its component materials are unchanged, processes of manufacture have produced a completed commercial article known and recognized in trade not as composition metal but as flitters, and which is designed and adapted for a particular use, to which the composition metal of trade could not be put until it had first been subjected to such additional processes of manufacture.

The drawplates, as said, are manufactures of steel bars or plates, but they are no longer the plates specifically enumerated in paragraph 135; but by a process of manufacture the bars or plates have become articles practically completed in manufacture and with a purpose distinct from that of the original product.

But it is contended by the importers that the term "plates," as used in paragraph 135, has heretofore been held by this court in Morris *v.* United States (*supra*) to include a steel table which was attached to a frame that could be moved on wheels, and that such case is a precedent here. In that case the decision evidently was based upon the case of Buehne *v.* United States (*supra*), the court holding that the article came within the provision for "plates and steel in all forms and shapes." These citations are thought inapt; for in the record it is stipulated by the importers that they do not rely on that part of paragraph 135 which relates to "steel in all forms and shapes." Conceding, however, an analogy between the articles under consideration and the steel table in the Morris case, I am, nevertheless, constrained by the evidence and reasoning of counsel for the Government to now hold that Congress primarily intended by paragraph 135 to simply include steel plates that have not been manufactured into some other completed commercial article.

The decision of the Board is overruled and the classification of the collector is affirmed.

(T. D. 27897.)

Flax-wool fabrics.

UNITED STATES *v.* JOHNSON.

U. S. Circuit Court, Southern District of New York. January 28, 1907. Suit 4289.

WOOL-FLAX FABRICS—SPECIFIC ENUMERATION—"IN PART OF WOOL"—"IN CHIEF VALUE OF FLAX."

Fabrics in part of wool but in chief value of flax are more specifically enumerated in paragraph 346, tariff act of 1897, as woven fabrics of which flax is the component material in chief value, than in paragraph 366 as "cloths * * * in part of wool."

ON application for review of decisions of the Board of United States General Appraisers.

For decisions below see Abstract 11697 (T. D. 27409) and Abstract 11794 (T. D. 27426), in which, on the authority of *In re* Ashworth, G. A. 5728 (T. D. 25431), the Board sustained protests of Charles A. Johnson & Co. against the assessment of duty by the collector of customs at the port of New York. Note T. D. 27462, directing the application for review

J. Osgood Nichols, assistant United States attorney, for the United States.

Hatch & Clute (*Walter F. Welch* of counsel), for the importers.

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HAZEL, *District Judge:* The Board of General Appraisers found that the lappings in question were woven fabrics weighing more than 4¼ ounces per square yard and counting between 60 and 120 threads to the square inch, composed of flax warp and wool weft, flax being the component material of chief value therein. Duty was assessed by the collector at 44 cents per pound and 50 per cent ad valorem under paragraph 366 of the tariff act of 1897; and certain other lappings known as strong twill lappings were assessed for duty at 33 cents per pound and 50 per cent ad valorem under said paragraph 366. The importers protest and claim here, in view of the findings of fact by the Board, that the goods should have been held dutiable under paragraph 346 at the rate per pound therein specified. Paragraph 366 specifies the rate of duty "on cloths, knit fabrics, and all manufactures of every description made wholly or in part of wool, not specially provided for," and paragraph 346 specifies the rate of duty on "woven fabrics or articles, * * * composed of flax, hemp, or ramie, or of which these substances or either of them is the component material of chief value." The protestants established to the satisfaction of the Board, notwithstanding conflicting testimony regarding the analyses of the fabric, that the merchandise consisted of a flax warp and wool weft, and that the flax was the component material of chief value. This conclusion of the Board ought not to be overthrown by this court sitting in review, unless it was based on obviously unreliable testimony or was contrary to the weight of evidence. Meyers *v.* United States (110 Fed. Rep., 940). The record does not indicate that a wrong conclusion was reached on the facts presented before the Board; and therefore the principal question for decision is whether the classification by the collector under paragraph 366 is more specific than the paragraph under which the importers claim. The Government insists that the merchandise is more specifically covered by the words "fabrics and all manufactures of every description made wholly or in part of wool," than by the words "woven fabrics * * * composed of flax * * * or of which these substances or either of them is the component material of chief value," and several cases are cited in support of the contention.

The case of United States *v.* Altman (107 Fed. Rep., 15), upon which stress is laid, is not thought a controlling precedent. In that case the importers contended that the provision for articles of wearing apparel of every description composed of cotton or other vegetable fiber or of which cotton or other vegetable fiber is the component material of chief value, was more specific. The court, however, decided that the lace provision was more descriptive. The question seems to have turned upon the appearance of the corset (the imported article) which was attractively trimmed with lace. Judge Lacombe thought that the lace feature was paramount and the words "wearing apparel * * * made wholly or in part of lace, or in imitation of lace" were more specific.

In Converse *v.* United States (113 Fed. Rep., 817) it was held that cotton cloth with small polka dots was dutiable as a fabric made wholly or in part of wool even though the cotton cloth was the component of chief value. It is to be observed, however, that the paragraph of the tariff act under which the importers claimed did not contain a provision relating to the component material of chief value, as in the case under consideration.

I think it reasonably clear that Congress intended to place a high rate of duty on all fabrics made wholly or in part of wool; but that intention evidently was qualified in the tariff act by the provision for the payment of duty at a different rate upon a fabric made of wool of which another substance such as flax was the component material of chief value. This view of the act of Congress, I conceive to be in consonance with the principle enunciated by the Supreme Court in Hartranft *v.* Meyer (135 U. S., 237). Hence it is thought that the flax provision is more specific than the provision for fabrics made wholly or in part of wool. The decision of the Board is therefore affirmed.

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(T. D. 27898.)

Silk fabrics.

MENDELSON *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. January 31, 1907. No. 124 (suit 3359).

1. SILKS IN THE GUM—"BOILED OFF."

Silks which, by the usual means of testing by boiling in water containing 10 per cent of olive oil soap, showed a loss by weight varying from 18 to 27 per cent, held to be dutiable as silk fabrics "in the gum," rather than as "boiled off," under paragraph 387, tariff act of 1897.

2. APPEAL FROM BOARD OF GENERAL APPRAISERS—INTRODUCTION OF FURTHER EVIDENCE.

Where an importer appeared at a hearing before the Board of General Appraisers and introduced merely an *ex parte* affidavit, the introduction of further evidence in the circuit court on appeal is not to be denied under the rule in United States *v.* China and Japan Trading Company (71 Fed. Rep., 864) relating to a case where the importer failed to offer any evidence or to appear before the Board.

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 146 Federal Reporter, 78 (T. D. 27088), affirming an unpublished decision of the Board of United States General Appraisers, rendered March 16, 1903, which affirmed the assessment of duty on importations by H. Mendelson & Co.

Walden & Webster (*Howard T. Walden* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, affirming a decision of the Board of General Appraisers, which sustained a decision of the collector of the port of New York, touching the classification of certain imported merchandise under the tariff act of 1897.

LACOMBE, *Circuit Judge:* The merchandise in controversy consists of pongee silk in the piece, imported from China and generally known as "Shantungs." It is concededly covered by paragraph 387, the relevant parts of which are as follows:

PAR. 387. Woven fabrics in the piece, not specially provided for in this Act, weighing not less than one and one third ounces per square yard and not more than eight ounces per square yard * * * if composed wholly of silk * * * if in the gum, two dollars and fifty cents per pound; if boiled off * * * three dollars per pound.

The Government contends that the fabrics imported have been boiled off; the importer that they are still in the gum.

Testimony was taken in the circuit court, but the judge, upon motion of counsel for the Government, expunged it, citing United States *v.* China and Japan Trading Company (71 Fed. Rep., 864). In the case cited the importer offered no evidence in support of his protest and "failed to appear pursuant to the Board's notification to show cause why the action of the collector should not be affirmed." In the case at bar, however, the importer did appear and offered evidence, which the Board found not satisfactory; it consisted merely of an affidavit made by a person in China. The rule laid down in the China and Japan case does not apply where the importer appears and offers some evidence to support his protest. We are of the opinion, therefore, that the evidence taken in the circuit court was properly in the record and should be considered.

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Upon the question in controversy the preponderance of proof is clearly with the importer, disregarding entirely the *ex parte* affidavit above referred to. It appears that mere inspection and manipulation will not determine whether or not a particular piece of silk has been "degummed"—that is, has been "boiled off," a process which removes the gum. The test universally employed is to weigh the silk, then boil it off, and then weigh it again. If by this process it loses in weight only some small percentage—5 per cent or less—that fact indicates that it had been already boiled off. If, on the contrary, the loss of weight is heavy—over 15 or 20 per cent—then it is evident that the silk had not been boiled off before the test was made. The samples of the pieces actually imported in this case had been lost or mislaid before testimony was taken in the circuit court. But the importer proved that the importation was of standard goods, and produced samples which he identified as being in all respects similar to the goods covered by this protest; and this testimony was corroborated by the customs examiner. These samples were tested by a disinterested witness from a silk dyeing and finishing company, who cut them into equal parts and boiled off one part of each. A comparison of weights showed a loss varying from 18 to 27 per cent, which, according to the undisputed testimony, would indicate that the sample thus tested had not previously been boiled off.

The only testimony offered by the Government is the return of the assistant appraiser and the evidence of a silk manufacturer. The return, however, does not give the conclusion of the appraising officer, but states that the silk "according to the report of the Government analyst is boiled off." No such report is presented, nor was the analyst examined; and the examiner who prepared the return declined to express his own opinion. The silk manufacturer tested the samples proved in the circuit court and found that they lost less than 2 per cent by boiling. On cross-examination, however, he admitted that he boiled them in plain water only, while it is shown that the practical business way employed to remove the gum is to boil the silk off in water containing 10 per cent of olive oil soap. The soap softens up the gum and cuts the greases, thereby making the boiling really effective; without the use of soap it will not thoroughly remove the gum. Upon this record it seems clear that the silk in controversy had not been boiled off before importation.

The decision of the circuit court is reversed.

(T. D. 27899.)

Carbonado or miners' diamonds.

Carbonado or miners' diamonds, when split or broken, dutiable at 10 per cent ad valorem under paragraph 435, tariff act of 1897.

TREASURY DEPARTMENT, *February 6, 1907.*

SIR: The Department is in receipt of information that merchandise described as "carbonado" or miners' diamonds has recently been imported at your port.

This merchandise when split or broken has been assessed with duty as precious stones at the rate of 10 per cent ad valorem under paragraph 435 of the tariff act as being advanced in condition from its natural state, and there are at the present time several protests pending before the Board of United States General Appraisers against this classification. Pending a decision in this matter, and to the end that there may be harmony of practice in this regard, you

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are hereby instructed to assess duty upon carbonado, when imported split or broken, at the rate of 10 per cent ad valorem under paragraph 435 of the tariff act.

Respectfully, JAMES B. REYNOLDS,
(44217.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 27900.)

Countervailing duty on sugar.

Sugar on which a bounty has been allowed at a certain rate per 100 kilograms should be subject to countervailing duty at such rate upon the basis of the weight of sugar actually exported.

TREASURY DEPARTMENT, *February 6, 1907.*

SIR: The Department is in receipt of your letter of the 4th instant inquiring whether the Department acquiesces in the decision of the Board of United States General Appraisers, G. A. 6524 (T. D. 27864), dated January 25, 1907, wherein it is held that sugar on which a bounty had been allowed at a certain rate per 100 kilograms should be subject to countervailing duty at such rate upon the basis of the weight of sugar actually imported without regard to the amount exported and on which the bounty had been allowed.

In view of the importance of the issue, you are hereby instructed to file an application for reviewing said decision of the Board of United States General Appraisers in accordance with section 15 of the customs administrative act of 1890.

Respectfully, JAMES B. REYNOLDS,
(3947 *k*.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27901.)

Drawback on belting cement.

Drawback on belting cement manufactured by the Shultz Belting Company, of St. Louis, Mo., with the use of imported glue.

TREASURY DEPARTMENT, *February 8, 1907.*

SIR: On the exportation of belting cement in tin cans of 1, 2, and 5 pound size, manufactured by the Shultz Belting Company, of St. Louis, Mo., with the use of imported glue, a drawback will be allowed equal in amount to the duty paid on the imported glue so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the number, size, and gross and net weight of the cans of cement contained in each package separately and in the entire shipment.

The drawback entry must show the total quantity of belting cement exported and the total quantity of imported glue contained therein

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and, in addition to the usual averments, that the merchandise is manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 5, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported glue which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantity, provided that it shall not exceed 50 per cent of the net weight of the exported merchandise.

Samples may be taken, or sworn samples furnished, as ordered by the collector, for required determinations.

Respectfully, JAMES B. REYNOLDS,
(43545.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27902.)

Drawback on coaster brakes.

Drawback on coaster brakes manufactured by the New Departure Manufacturing Company, of Bristol, Conn., with the use of imported Lucas lubricators.

TREASURY DEPARTMENT, *February 8, 1907.*

SIR: On the exportation of coaster brakes manufactured by the New Departure Manufacturing Company, of Bristol, Conn., with the use of the Lucas lubricators attached thereto and made a part thereof, a drawback will be allowed equal in amount to the duty paid on the imported lubricators so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the number of coaster brakes, with the Lucas lubricators attached thereto, contained in each case and in the entire shipment.

The drawback entry must show the total number of coaster brakes with the Lucas lubricators attached thereto exported, the total number of imported lubricators consumed in the manufacture thereof, describing the same as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 29, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of Lucas lubricators, in condition as imported, which may be taken as the basis for allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantities.

Respectfully, JAMES B. REYNOLDS,
(43642.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27903.)

Drawback on umbrella, parasol, and cane handles.

Drawback on umbrella, parasol, and cane handles manufactured by Morgenstern & Goldsmith, of New York City, with the use of imported parts, known as tops, posts, and mounts.

TREASURY DEPARTMENT, *February 8, 1907.*

SIR: On the exportation of umbrella, parasol, and cane handles manufactured by Morgenstern & Goldsmith, of New York City, with the use of imported parts known as tops, posts, and mounts, a drawback will be allowed equal in amount to the duties paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the number of handles in each package and in the entire shipment.

The drawback entry must show the total number of each style, number of handles exported, and there shall be attached to each entry a sworn abstract of their special manufacturing records in the form appearing in the manufacturers' sworn statement. In addition to the usual averments, the entry must show that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 26, 1907, transmitted herewith for filing in your office.

In liquidation, the quantities of tops, posts, and mounts, in condition as imported, which may be taken as the bases for allowance of drawback, may equal the quantities declared in the drawback entry after official verification of exported quantities, provided the allowance shall not exceed one top, post, and mount for each handle exported.

Respectfully, JAMES B. REYNOLDS,
(42889.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27904.)

Parcels-post convention with Ecuador.

[Circular No. 9.]

TREASURY DEPARTMENT, *February 9, 1907.*

To collectors and other officers of the customs:

The Department is advised by the Postmaster-General of the conclusion of a parcels-post convention between the United States and Ecuador, to take effect March 1, 1907.

Said convention provides in part that there shall be admitted to the mails exchanged thereunder articles of merchandise and mail

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matter (except letters, post cards, and written matter) of all kinds that are admitted under any conditions to the domestic mails of the country of origin, except that no parcel must exceed $50 or its equivalent in value, 11 pounds in weight, nor the following dimensions: Greatest length in any direction, 3 feet 6 inches; greatest length and girth combined, 6 feet; and must be so wrapped or inclosed as to permit the contents to be easily examined by customs officers, and by postmasters duly authorized to do so.

The customary provisions regarding prohibited importations, subjecting the packages to customs duties and customs regulations for the protection of the customs revenue, and declarations appear in this convention.

Undelivered and refused packages are to be returned at the expiration of thirty days from their receipt at offices of destination.

When the contents of a parcel, which can not be delivered, are liable to deterioration or corruption, they may be destroyed at once, if necessary, or, if expedient, sold without previous notice or judicial formality for the benefit of the right person.

LESLIE M. SHAW, *Secretary.*

(T. D. 27905.)

Amendatory commercial agreement between the United States and Portugal under the provisions of section 3, act of July 24, 1897.

[Circular No. 10.]

TREASURY DEPARTMENT, *February 9, 1907.*

To collectors and other officers of the customs:

The appended proclamation of the President relating to an amendatory commercial agreement with Portugal extending to Porto Rico the provisions of the commercial agreement between the United States and Portugal (T. D. 22277), issued under the provisions of section 3 of the act of July 24, 1897, is published for the information and guidance of officers of the customs and others concerned.

The Department holds that goods, wares, and merchandise under bond for warehousing, transportation, or any other purpose for which no permit of delivery has been issued, come within the effect of the proclamation.

LESLIE M. SHAW, *Secretary.*

RECIPROCITY WITH PORTUGAL.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas His Most Faithful Majesty the King of Portugal and of the Algarves and the United States of America have concluded on November 19, 1902, an Additional and Amendatory Agreement to the Commercial Agreement of May 22, 1899, between the same High Contracting Parties, entered into in accordance with the provisions of

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Section 3 of the Tariff Act of the United States approved July 24, 1897, which Additional and Amendatory Agreement is in the English and Portuguese texts, word for word as follows:

The President of the United States of America and His Most Faithful Majesty the King of Portugal and of the Algarves, finding it expedient to amend the Commercial Agreement between the two countries, signed at Washington on the 22nd day of May, 1899, have named for this purpose their respective Plenipotentiaries, to wit:

The President of the United States of America, the Honorable John Hay, Secretary of State of the United States, and

His Most Faithful Majesty, the Viscount de Alte, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Washington;

Who, after having communicated each to the other their respective full powers, found to be in good and due form, have agreed upon the following additional and amendatory Articles to be taken as part of the said Agreement:

ARTICLE I.

The High Contracting Parties mutually agree that the provisions of the said Agreement shall apply also to the Island of Porto Rico.

ARTICLE II.

This Additional and Amendatory Agreement shall be ratified by His Most Faithful Majesty so soon as possible, and upon official notice thereof the President of the United States shall issue his Proclamation giving full effect to the same. From and after the date of such Proclamation this Agreement shall take effect, and shall continue in force during the continuance in force of the said Commercial Agreement signed May 22, 1899.

Done in duplicate in English and Portuguese texts at Washington this nineteenth day of November, one thousand nine hundred and two.

JOHN HAY [SEAL].
VISCONDE DE ALTE [SEAL].

Now, therefore, be it known that I, THEODORE ROOSEVELT, President of the United States of America, acting under the authority conferred by said Act of Congress, have caused the said Additional and Amendatory Agreement to be made public, to the end that the same may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this twenty-fourth day of January in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty-first. [SEAL.]

THEODORE ROOSEVELT.

By the President:
ELIHU ROOT, *Secretary of State.*

(T. D. 27906.)

Importation of egg products.

[Circular No. 11.]

TREASURY DEPARTMENT, *February 11, 1907.*

To collectors and other officers of the customs:

Referring to T. D. 25957 of January 14, 1905, relative to importations under the pure-food law of March 3, 1903, and T. D. 27546 of

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August 2, 1906, relative to importations of broken or liquid egg, I have to state that the Secretary of Agriculture advises that shipments of such egg products should be released under bond and the importers notified that samples have been taken for inspection under the food and drugs act of June 30, 1906. You will be governed accordingly.

LESLIE M. SHAW, *Secretary.*

(T. D. 27907.)

Millinery articles in chief value of feathers.

An appeal directed from G. A. 6537 (T. D. 27888) of February 4, 1907, involving the dutiable classification of millinery articles composed in chief value of feathers.

TREASURY DEPARTMENT, *February 11, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, G. A. 6537 (T. D. 27888), of February 4, 1907, involving the dutiable classification of millinery articles composed in chief value of feathers.

In view of the importance of the issue, you are hereby directed to file an application for review of the said decision of the Board of United States General Appraisers, in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(44338.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27908.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 27909.)

Common carrier.

Discontinuing shipments of unappraised merchandise under bond of St. Louis and San Francisco Railroad Company.

TREASURY DEPARTMENT, *February 12, 1907.*

SIR: At the request of the American Surety Company, surety on the bond of the St. Louis and San Francisco Railroad Company, for the transportation of unappraised merchandise from New Orleans, La., which request is made at the instance of the carrier, you will discontinue the shipment of unappraised merchandise under the

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bond dated January 9, 1905, of the carrier named and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(19023.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New Orleans, La.*

(T. D. 27910.)

Drawback on lumber.

Drawback on lumber manufactured by the Shepard & Morse Lumber Company, of Burlington, Vt., from imported deals.—T. D. 26434 of June 5, 1905, extended.

TREASURY DEPARTMENT, *February 12, 1907.*

SIR: The Department's regulations of June 5, 1905 (T. D. 26434), establishing a rate for the allowance of drawback on the exportation of lumber manufactured from imported deals by the Baker Brothers Lumber Company, of Plattsburg, N. Y., are hereby extended, so far as applicable, to cover the exportation of similar lumber manufactured by the Shepard & Morse Lumber Company, of Burlington, Vt., in accordance with their statement, dated January 23, 1907, which is transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(27235.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Burlington, Vt.*

(T. D. 27911.)

Port of entry.

Brunswick, Ga., a port of entry for immediate transportation without appraisement of dutiable merchandise.

TREASURY DEPARTMENT, *February 12, 1907.*

To officers of the customs and others concerned:

The appended act of Congress, extending to Brunswick, Ga., the privileges of the first section of the act approved June 10, 1880, is published for the information and guidance of all concerned.

LESLIE M. SHAW, *Secretary.*

AN ACT To amend an Act entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," approved June tenth, eighteen hundred and eighty, by extending the provisions of the first section thereof to the port of Brunswick, Georgia.

Be it enated by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the first section of the Act approved June tenth, anno Domini eighteen hundred and eighty, entitled "An Act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes," be, and the same are hereby, extended to the port of Brunswick, Georgia.

Approved, February 6, 1907.

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(T. D. 27912—G. A. 6541.)

Merchandise from the high seas—Jurisdiction of the Board of General Appraisers.

The jurisdiction of the Board of General Appraisers, sitting as a board of classification under the authority conferred by section 14 of the customs administrative act of June 10, 1890, does not extend to a review of the question whether an article has been imported or not, or whether or not it was brought from a foreign country.—The Insular Cases (182 U. S., 221; 21 Sup. Ct. Rep., 742); *In re* Goetze, G. A. 4967 (T. D. 23191), and *In re* Toma, G. A. 5042 (T. D. 23417), followed.

United States General Appraisers, New York, February 9, 1907.

In the matter of protest 211208 of United States Sponge Company against the assessment of duty by the collector of customs at the port of Tampa.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

SOMERVILLE, *General Appraiser:* The merchandise consists of 275 bunches of sponges, which were assessed for duty by the collector at the port of Tampa, Fla., at 20 per cent ad valorem under paragraph 82 of the tariff act of 1897. The articles were entered on a pro forma invoice stating that they were imported by the United States Sponge Company "from the high seas."

The testimony taken at the hearing shows that the goods were obtained from the high seas, about 35 or 40 miles from the Florida coast and 55 miles from Tampa, and that they were brought into Tampa in an American vessel, built in this country and owned by an American citizen. The protest makes the following claim:

That said sponges were not imported from foreign countries within the provisions of any act of Congress, enacted for the regulation of taxes and duties on merchandise, or under the provisions of the act of Congress made July 24, 1897; and the vessel upon which said sponges were brought did not come from any foreign port, and was not obliged to enter under any provision of law, and said collector was without jurisdiction to levy and collect said duties, and said assessment was illegal.

It is stated in the brief of counsel for the importers that the issue is as to whether the high seas are a foreign country. Various authorities are cited in support of the proposition that a foreign country is one exclusively within the sovereignty of a foreign nation and without the sovereignty of the United States, namely, De Lima *v.* Bidwell (182 U. S., 1; 21 Sup. Ct. Rep., 743); Burgess on Political Science and Constitutional Law (vol. 1, pp. 1 and 52); American and English Encyclopedia of Law (2d ed., vol. 25, p. 1160); Stairs *v.* Peaslee (18 How., 521).

The question for decision resolves itself simply into this: Has the Board of General Appraisers, sitting as a board of classification under the provisions of section 14 of the customs administrative act of June 10, 1890, jurisdiction of the case in question?

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The first section of the present tariff act of 1897, under the provisions of which this assessment was made, and entitled "An Act to provide revenue for the Government and to encourage the industries of the United States," reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the passage of this Act, unless otherwise provided for in this Act, there shall be levied, collected and paid upon all articles *imported from foreign countries*, and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely:

Then follow the various schedules and paragraphs of the act.

A similar contention was before the Board in the case of *In re* Goetze, G. A. 4658 (T. D. 22018), where importations of certain merchandise shipped from the island of Porto Rico were brought into the port of New York at dates subsequent to the exchange of ratifications between the United States Government and the Government of Spain of the treaty of Paris, by which treaty the island of Porto Rico was ceded to the United States (30 Stat., 1754 to 1762). Duty was assessed upon the goods by the collector at the port of New York under appropriate provisions of the tariff act of 1897. The importers contended that as the enacting clause of this tariff act (sec. 1) refers only to "articles *imported from foreign countries*," the importations were not subject to duty for the reason that the island of Porto Rico was not at the time of the arrival of the goods at the port of New York a foreign country, but a part of the United States to which it was ceded. No contest was made before the Board as to its jurisdiction of the case in question either by the importers or by the Government. The Board held in that case that for tariff purposes Porto Rico was a foreign country and that the duties in question were properly assessed. On appeal being taken from the decision of the Board to the circuit court for the southern district of New York, the views of the Board were affirmed in every particular, per Townsend, *J*. Goetze *v*. United States (103 Fed. Rep., 72).

A further appeal was prosecuted by the importers to the Supreme Court of the United States, which is found reported in 182 United States, 221 (21 Sup. Ct. Rep., 742). It was held by that court that the sole question presented by the record in that case was whether Porto Rico was a foreign country within the meaning of the tariff act; and it was held that the Board of General Appraisers had no jurisdiction of the case for the reasons stated in De Lima *v*. Bidwell, cited *supra*. The following language was used by Mr. Justice Brown, who delivered the opinion of the court:

The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country; in other words, whether they were imported at all as that word is defined in Woodruff *v*. Parham (8 Wall., 123, 132). We think the decision in the Fassett case is conclusive to the effect that, if the question be whether the sugars were imported or not, such question could not be raised

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before the Board of General Appraisers, and that, whether they were imported merchandise for the reasons given in the Fassett case, that a vessel is not an importable article, or because the merchandise was not brought from a foreign country, is immaterial. In either case the article is *not imported.*

In the Goetze case the judgment of the circuit court was reversed by the Supreme Court and the case remanded with instructions to reverse the action of the Board of General Appraisers. This decision was subsequently followed by the Board in *In re* Goetze, G. A. 4967 (T. D. 23191), and *In re* Toma, G. A. 5042 (T. D. 23417). Whatever our views might be as to the right of every judicial tribunal to pass *in limine* upon the preliminary question of its own jurisdiction, subject to review of course by superior tribunals, we are of opinion that the decisions of the Supreme Court in what are known as the "insular cases" before cited are conclusive on the question of the Board's jurisdiction. We are debarred, therefore, from expressing any view as to the merits of the case, which would be mere *obiter dicta.* The protest is accordingly dismissed for want of jurisdiction.

(T. D. 27913—G. A. 6542.)

Fashion-plate drawings—Works of art.

Drawings by Americans residing temporarily in Paris and representing persons and garments or parts of garments, sometimes with landscape background, intended to illustrate modes and fashions in a periodical for women, are not "works of art" in the tariff sense, and can not be admitted free under the provision in paragraph 703, tariff act of 1897, for "works of art, the production of American artists residing temporarily abroad."

United States General Appraisers, New York, February 11, 1907.

In the matter of protests 218000, etc., of John L. Vandiver against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* These protests cover various importations of fashion-plate drawings intended for illustrations in the Ladies Home Journal. They were assessed for duty in accordance with the reciprocal tariff agreement with France (T. D. 19405), which, as to French productions, reduces from 20 per cent to 15 per cent ad valorem the duty on "paintings in oil or water colors, pastels, pen and ink drawings, and statuary," described in paragraph 454 of the regular schedules of the tariff act of 1897. The sketches in question are all the work of Americans residing temporarily in Paris, and are claimed to be free under paragraph 703 of said act, covering "works of art, the production of American artists residing temporarily abroad."

While some of these pictures include landscape, most of them are drawings of persons and garments or parts of garments intended to illustrate the modes and fashions in France or Paris, where they are

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drawn. It might be claimed that they are artistic in design or appearance so far as the landscape is portrayed or in the faces of the figures, but these, in our view, are merely incidental to the main thought and purpose of the sketches, which is to show to the readers of the periodical the styles of garments worn in France. We do not think this is a purpose which, when carried out, would characterize the commodity as "works of art;" and aside from this the works in themselves are not of such merit, we think, as would warrant us in finding that they are works of art, if we could disabuse our minds and thoughts of the idea that they are for purely practical and utilitarian purposes.

The protests are overruled and the collector's decision affirmed.

(T. D. 27914—G. A. 6543.)

Marble monument—Works of art.

A marble monument upon which the only free sculpture is a cornice, a bust in bas-relief, and a garland of flowers covering but a slight area of the marble surface, the remaining carving consisting of plain paneling and beveling, is not a "work of art" within the meaning of paragraph 703, tariff act of 1897, and is properly assessed for duty as a manufacture of marble under paragraph 115, even though imported for presentation to a church.

United States General Appraisers, New York, February 11, 1907.

In the matter of protest 214491 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The article in controversy is a marble monument which was presented to the church of Our Lady of Good Counsel, in Philadelphia, by the congregation and erected in the churchyard to the memory of a deceased pastor. It was assessed for duty as a manufacture of marble, at 50 per cent ad valorem, under paragraph 115 of the tariff act of 1897, and is claimed to be free under paragraph 703 as a "work of art" imported for presentation to a religious society. The only question at issue is its status as a work of art.

The monument is a low, 4-sided, tapering shaft surmounted by a cross. The shaft is plain except for a tablet with carved bust in bas-relief and an inscription, and beveling and paneling upon the body of the shaft designed to give the effect of 5 blocks of marble laid one above the other. A simple cornice and garland of flowers are carved on the capstone. The base consists of plain blocks of marble beveled. The only free sculpture on the monument is the cornice, the relief bust, and garland of flowers, which cover a very slight area of the whole marble surface.

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It is not proposed to find that the article in question is not skillfully carved or is devoid of a symmetry that makes it attractive to the eye. But in the Board's judgment it can not be admitted under paragraph 703 unless every symmetrical object of carved marble is a work of art within the meaning of the law; and that breadth of construction is not warranted by any authority known to the Board.

The monument appears to have been properly classified as a manufacture of marble, and the protest is accordingly overruled with an affirmance of the collector's decision.

(T. D. 27915—G. A. 6544.)

Cotton yarn—Embroidery cotton.

1. Five-ply cotton yarn, used on embroidery machines, held properly dutiable as cotton yarn according to number under paragraph 302, tariff act of 1897.
2. Two-ply cotton yarn, used on embroidery machines to lock the embroidery stitch on the fabric, held dutiable as cotton yarn under paragraph 302 of said act.
3. The term "embroidery cotton" has a well-known commercial meaning that excludes each of these yarns —Loeb *v.* United States (T. D. 27752) followed.

United States General Appraisers, New York, February 11, 1907.

In the matter of protests 163*h*, etc., of Loeb & Schoenfeld against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* This merchandise consists of cotton yarn used on embroidery machines. It is of two classes, that which is used to execute embroidery design and that which locks the embroidery stitch on the fabric. Both were assessed as embroidery cotton or spool thread of cotton under the provisions of paragraph 303 of the tariff act of 1897 at the rate of one-half of 1 cent for each 100 yards or fractional part thereof. The protestants claim the merchandise properly subject to the duty provided in paragraph 302 of said act for cotton thread or yarn.

The yarn used in executing the design, which is a 5-ply yarn, was the subject of the Board's unpublished decision on protest 96773*f*, September 25, 1902 (vol. 447, p. 302, of the Board's unpublished decisions). It was there held, following Magone *v.* Wiederer (159 U. S., 555), that as the chief use of the yarn was for embroidering, it was dutiable as embroidery cotton. On appeal this decision was affirmed by the circuit court for the southern district of New York in Loeb *v.* United States (143 Fed. Rep., 698; T. D. 26942).

On appeal to the circuit court of appeals for the second circuit this decision was reversed (T. D. 27752), the court holding that the testimony showed the term "embroidery cotton" was a well-known commercial term, and that this yarn was not included in that term.

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In accordance with said decision, we hold this part of the merchandise properly dutiable under paragraph 302.

The yarn that holds the embroidery stitch on the fabric is a 2-ply mercerized yarn, and is reported by the appraiser to be put up in the form of shuttle cop. This merchandise is entirely different from that held by the Board to be known commercially as embroidery cotton in G. A. 5372 (T. D. 24560) and G. A. 5936 (T. D. 26070). We find it is not commercially known as embroidery cotton, and that it is not spool thread. We further find that it is cotton yarn. We hold it properly dutiable under paragraph 302.

The protests are sustained, the decisions of the collector reversed, and reliquidation will follow.

(T. D. 27916.)

Abstracts of decisions of the Board of General Appraisers.

No. 14371.—Imitation Pearl Beads.—Protest 79963*f* of D. Lisner against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 4, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6088 (T. D. 26554), relating to imitation pearl beads.

No. 14372.—Wool on the Skin.—Protest 220798 of Boston Hide and Skin Association against the assessment of duty by the collector of customs at the port of Eastport. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 4, 1907. Opinion by McClelland, G. A.

The protest related to sheepskins with the wool on. As claimed by the importers, the Board held that only 27 per cent of the weight of the importation should have been classified as wool.

No. 14373.—Cotton Twine in Balls.—Protest 203960 of Theo. H. Diener & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 4, 1907.

The merchandise, which was invoiced as cotton twine in balls, was classified as cotton cords under paragraph 320, tariff act of 1897, and was claimed to be dutiable as cotton thread or yarn under paragraph 302. Protest overruled.

De Vries, *General Appraiser:* * * * The merchandise is from 4 to 12 ply and starched. A member of the importing firm testified that they had dealt in it for one year only, and that they called it "imported cotton twine." We further quote from his testimony:

Q. Looking at this exhibit here (official) is that a cord in your judgment?—A. It is either a cord or a twine; more properly a twine.

Q. In trade parlance what is the difference between cord and twine?—A. At the present time the difference between a cord and twine would be, a cord is something made of cotton; a twine, something made of flax. It doesn't necessarily follow that a cord must be cotton; it is not an absolute statement.

* * * * * * *

Q. But you do not think it would ever be called thread?—A. No; I do not.

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Another witness called in behalf of the importer testified that it was "sometimes called wrapping cord" and sometimes called "wrapping twine," also that "it would be called a thread all right." He further testified that he would call it "back twisted from our regular seine twine."

It appears that the merchandise is a cotton twine mostly used for tying up bundles, and we do not think the importers have produced evidence that would support the contention that it should be classified as thread or yarn. The chief use of yarn is for weaving, and of thread for sewing, and there is nothing in the record to show that this merchandise is fit for either of these purposes. In fact, an examination of the sample leads us to believe it is not fit for such purposes.

A number of decisions of the Board are cited by counsel for the importers in his brief, in which merchandise was held to be dutiable as yarns and not as cords, but an examination of those records shows that the merchandise was wholly dissimilar to that now in question.

No. 14374.—PROTEST UNSUPPORTED.—Protest 222305 of Joseph Pistorino against the assessment of duty by the collector of customs at the port of Boston. Before Board 8 (Waite, Somerville, and Hay, General Appraisers), February 4, 1907. Opinion by Waite, G. A.

Protest overruled for want of merit.

No. 14375.—PROTEST UNSUPPORTED.—Protest 205812–21707 of William R. Maniere against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14374 (*supra*).

No. 14376.—PROTEST UNSUPPORTED.—Protest 201922 of Loeb-Nunez Havana Company against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Somerville, G. A.

Same as No. 14374 (*supra*).

No. 14377.—LEAF TOBACCO.—Protest 226801 of Cane Brothers, protest 225464 of I. Dankowitz, protest 226633 of Fernandez Ernst Company, protest 225701 of F. E. Fonseca & Co., protest 228951 of E. Hoffman & Son, protest 226804 of Max Schwarz, protests 226640, etc., of Selgas, Suarez & Co., and protest 226803 of Starlight Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), February 9, 1907. Opinions by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the various bales to contain the following percentages of filler tobacco and modified the collector's classification accordingly: Protest 226801: Bales 2274 and 2278, 88 per cent, and bale 2277, 86 per cent. Protest 225464: Bale 771, 92 per cent. Protest 226633: Bale 520, 96 per cent; bales 502, 506, 499, 500, and 507, 95 per cent, and bales 503 and 504, 92 per cent. Protest 225701: Bale 511, 92 per cent; bales 509, 513, and 506, 90 per cent; bales 503, 515, 521, and 522, 88 per cent, and bale 512, 86 per cent. Protest 228951: Bale 5821, 90 per cent, and bale 5817, 88 per cent. Protest 226804: Bale 9549, 88 per cent. Protests 226640, etc.: Bale 330, 95 per cent; bales 321, 324, 326, 334, 337, 339, and 340, 90 per cent. Protest 226803: Bale 1700, 86 per cent.

No. 14378.—LEAF TOBACCO.—Protest 221958–23241 of C. Vega & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers).

Same as No. 14377 (*supra*), the percentages being as follows: Bale 21, 90 per cent, and bale 20, 89 per cent.

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No. 14379.—Wool Wearing Apparel.—Protests 219876, etc., of Collins & Fairbanks Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Lunt, G. A.

The protests related to so-called silk hats, classified as wearing apparel in part of wool under paragraph 370, tariff act of 1897, and claimed to be dutiable as wearing apparel in chief value of silk under paragraph 390. Assessment affirmed.

No. 14380.—Waterproof Cloth of Wool.—Protests 221949-23259, etc., of Silas H. Jenkins Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Lunt, G. A.

The protests related to waterproof fabrics, which were held to have been properly classified as woolen cloths under paragraph 366, tariff act of 1897.

No. 14381.—Antiselenite.—Protest 217799 of C. G. Brewster against the assessment of duty by the collector of customs at the port of Laredo. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907.

The protest related to antiselenite, classified as a chemical compound under paragraph 3, tariff act of 1897, and claimed to be dutiable as an unenumerated manufactured article under section 6. Protest sustained.

Lunt, *General Appraiser:* * * * The merchandise is the same as that covered by Abstract 13799 (T. D. 27785), in which it was held to be a chemical compound. In this case a liberal sample was furnished by the importers, which we submitted to the United States chemist at the port of New York for analysis, who reports the same to contain 99.45 per cent of water, and the balance some vegetable substances; and it appears to be in fact a vegetable extract which is claimed to possess the qualities of preventing the scaling of boilers. Upon the evidence in the case referred to and in this case, we are obliged to reverse our former opinion and find that the substance is in fact not a chemical compound but is a nonenumerated manufactured article dutiable under section 6 at 20 per cent ad valorem.

No. 14382.—Bone Phosphate—Manure.—Protest 226604 of H. J. Baker & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907.

The merchandise was invoiced as bone phosphate. The importers objected to its classification as a chemical compound under paragraph 3, tariff act of 1897, contending that it should have been classified free of duty under paragraph 569, relating to manures and substances used only for manure. Protest sustained.

Lunt, *General Appraiser:* * * * We find the merchandise in question to be in fact tricalcium phosphate containing less than 80 per cent of phosphoric acid, sold exclusively by the importers to the trade of manufacturers of fertilizers and used by them as a source of phosphoric acid in the production of fertilizers. We find that the same is not fit for use in medicine or for the manufacture of baking powder or other substances for human consumption, and that the same is fit only for use in the manufacture of fertilizers.

No. 14383.—Imitation Pearls.—Protests 61285*f*, etc., of D. Lisner against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6088 (T. D. 26554), relating to imitation pearls.

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No. 14384.—Coral Cameo—Precious Stone.—Protest 199756 of John L. Vandiver against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Sharretts, G. A.

The protest related to an unset coral cameo valued at $173, which was classified as a manufacture of coral under paragraph 115, tariff act of 1897, and was claimed to be dutiable as a precious stone cut but not set under paragraph 435. Protest sustained on authority of G. A. 6482 (T. D. 27726).

No. 14385.—Ornaments.—Protest 182535 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), February 9, 1907. Opinion by Sharretts, G. A.

Certain ornaments (combs) were held dutiable as manufactures of horn under paragraph 449, tariff act of 1897, as claimed by the importers.

No. 14386.—Thermometers—Glass Eyes.—Protest 21025 *h* of Oelschlaeger Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), February 9, 1907. Opinion by Sharretts, G. A.

The protest related to thermometers and artificial eyes, classified under paragraph 100, tariff act of 1897, relating to decorated glass, blown glass, etc. The thermometers were held dutiable as manufactures in chief value of glass under paragraph 112, as claimed by the importers. Assessment was affirmed as to the glass eyes.

No. 14387.—Ornaments—Pins—Jewelry.—Protests 40868 *b*–14401, etc., of Mandel Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Sharretts, G. A.

The protests related to ornaments and pins, classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable as manufactures of the component material of chief value. Protests sustained in part.

No. 14388.—Ornaments—Pins—Jewelry.—Protests 158046, etc., of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent).

Same as No. 14387 (*supra*).

No. 14389.—Manufactures of Metal.—Protest 72963 *f* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), February 9, 1907. Opinion by Sharretts, G. A.

Portions of the goods were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

No. 14390.—Featherstitch Braids—Linen Bobbins.—Protest 57646 *f* of Dieckerhoff, Raffloer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by Howell, G. A.

G. A. 5302 (T. D. 24302) and G. A. 5744 (T. D. 25480) followed, relating to linen bobbins and featherstitch braids.

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No. 14391.—FEATHERSTITCH BRAIDS.—Protest 222166 of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14392.—FEATHERSTITCH BRAIDS.—Protests 221938-23264, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14391 (*supra*).

No. 14393.—JACQUARD FIGURED GOODS.—Protests 72929*f*, etc., of J. H. Thorp & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by Howell, G. A.

Protests sustained on the authority of G. A. 5000 (T. D. 23309), relating to Jacquard figured goods.

No. 14394.—RENAISSANCE LACE.—Protest 223262 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of G. A. 6386 (T. D. 27441), relating to Renaissance lace articles.

No. 14395. — RENAISSANCE LACE ARTICLES.—Protest 201530 of Scheuer & Co. Opinion by De Vries, G. A.

Same as No. 14394 (*supra*).

No. 14396.—SILK JEWEL CASES.—Protest 224865-23286 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by Howell, G. A.

The protest related to jewel cases, which the Board held to have been properly classified as manufactures of silk under paragraph 391, tariff act of 1897. Note Abstract 13445 (T. D. 27719).

No. 14397.—COTTON YARN.—Protests 109206, etc., of Heller & Long *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

The merchandise, which was classified as embroidery cotton under paragraph 303, tariff act of 1897, was held dutiable as cotton yarn under paragraph 302, as claimed by the importers.

No. 14398.—MERCERIZED COTTONS.—Protests 198914, etc., of May & Ellis against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

Mercerized cotton cloth was held to have been properly classified as colored cottons. G. A. 4162 (T. D. 19423) followed.

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No. 14399.—FLAX FABRICS.—Protests 218397, etc., of J. F. White & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

A portion of the goods was held dutiable under paragraph 346, tariff act of 1897, as flax fabrics weighing less than 4½ ounces per square yard.

No. 14400.—FIGURED COTTON CLOTH.—Protests 231880, etc., of Thomas Young *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 14401.—FIGURED COTTON CLOTH.—Protest 230907 of Sterling & Welch Company against the assessment of duty by the collector of customs at the port of Cleveland.

Same as No. 14400 (*supra*).

No. 14402.—DAMASK ARTICLES.—Protests 221187, etc., of Henry Glass & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of Dunham *v.* United States (T. D. 27805), relating to damask articles.

No. 14403.—FLAX ARTICLES.—Protests 622*h*, etc., of R. B. MacLea Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinion by De Vries, G. A.

A portion of the goods was held dutiable under paragraph 346, tariff act of 1897, as flax fabrics weighing less than 4½ ounces per square yard, as claimed by the importers.

No. 14404.—MACARONI.—Protest 210482 of F. Honore against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907.

The merchandise, which was classified as an unenumerated manufactured article under section 6, tariff act of 1897, was claimed to be dutiable under paragraph 229, relating to "macaroni * * * and all similar preparations." Protest sustained.

WAITE, *General Appraiser:* The merchandise, which is invoiced as macaroni, is a white and exceedingly light substance in flakes of various sizes about as thick as tissue paper. It is a farinaceous preparation containing leguminous matter, and according to such information as the records contain is used for thickening or flavoring soup. When the question of its value came before Board No. 1 on reappraisement, information received by them indicated that it was made by a manufacturer of macaroni. * * * An examination of the official sample and such indications of its character and uses as are afforded by the appraiser's report and the Board's files in reappraisement No. 39423 lead us to believe that the article would have been more properly classified under paragraph 229, if not as "macaroni," then as being in the class of "all similar preparations."

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No. 14405.—MARBLE COLUMNS.—Protest 216286 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Waite, G. A.

The protest related to columns, which were held to have been properly classified as manufactures of marble under paragraph 115, tariff act of 1897.

No. 14406.—WASTE BAGGING.—Protests 191053, etc., of W. Wolf & Sons *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 4406 (T. D. 20960), relating to waste bagging.

No. 14407.—SHORTAGE.—Protest 219255 of H. S. Beer against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Somerville, G. A.

The Board sustained the importer's contention that an allowance should have been made for a shortage of two boxes containing 25 pieces of embroidery.

No. 14408.—PROTEST FILED TOO LATE.—Protest 217456 of Westinghouse Electric and Manufacturing Company against the assessment of duty by the surveyor of customs at the port of Pittsburg. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Somerville, G. A.

The protest was dismissed, not having been filed within the time required by law.

No. 14409.—WEIGHT OF WOOL.—Protests 221272, etc., of Brown & Adams *et al.* against the assessment of duty by the collector of customs at the port of Boston: Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6512 (T. D. 27800), relating to the dutiable weight of wool.

No. 14410.—POST CARDS—WEIGHT.—Protest 215722 of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinion by Hay, G. A.

The question before the Board was whether certain post cards weighed 25 pounds per thousand as assessed or 20 pounds per thousand as claimed by the importers. Protest sustained.

No. 14411.—PROTESTS ABANDONED.—Protests 221229, etc., of Max Mayer & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by McClelland, G. A.

Protests abandoned; overruled.

No. 14412.—PROTESTS ABANDONED.—Protests 226738, etc., of E. Dillingham against the assessment of duty by the collector of customs at the port of Ogdensburg.

Same as No. 14411 (*supra*).

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No. 14413.—PROTESTS ABANDONED.—Protests 183629, etc., of A. Kastor & Bros. *et al.* Opinion by Sharretts, G. A.

Same as No. 14411 (*supra*).

No. 14414.—PROTESTS ABANDONED.—Protests 219423, etc., of M. H. Frank & Co. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by De Vries, G. A.

Same as No. 14411 (*supra*).

No. 14415.—PROTEST ABANDONED.—Protest 193354 of T. J. Woodside against the assessment of duty by the collector of customs at the port of El Paso. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by Fischer, G. A.

Same as No. 14411 (*supra*).

No. 14416.—PROTESTS ABANDONED.—Protests 219426, etc., of L. Gandolfi & Co. *et al.* Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Same as No. 14411 (*supra*).

No. 14417.—PROTEST UNSUPPORTED.—Protest 157679 of A. A. Solomon, Jr., & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 9, 1907. Opinion by Sharretts, G. A.

Protest overruled for want of merit.

No. 14418.—PROTESTS UNSUPPORTED.—Protest 177031 of L. Steiner, protest 64773*f* of Sussfeld, Lorsch & Co., and protest 223409, etc., of A. & H. Veith. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent).

Same as No. 14417 (*supra*).

No. 14419.—PROTEST UNSUPPORTED.—Protest 205815–21763 of Maison Nouvelle against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent).

Same as No. 14417 (*supra*).

No. 14420.—PROTEST UNSUPPORTED.—Protest 221960–23311 of Wakem & McLaughlin against the assessment of duty by the collector of customs at the port of Chicago. Opinion by Lunt, G. A.

Same as No. 14417 (*supra*).

No. 14421.—PROTEST UNSUPPORTED.—Protest 211439 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Lunt, G. A.

Same as No. 14417 (*supra*).

No. 14422.—PROTESTS UNSUPPORTED.—Protests 222234, etc., of Max Mayer & Co. Opinion by McClelland, G. A.

Same as No. 14417 (*supra*).

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No. 14423.—PROTESTS UNSUPPORTED.—Protests 173468, etc., of Joseph L. Freund, protest 224616 of Freund, Foise & Co., protest 222330 of Germania Importing Company, and protest 223084 of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 9, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 14424.—PROTEST UNSUPPORTED.—Protest 222539 of Olivier & Co. Opinion by Howell, G. A.

Same as No. 14423 (*supra*).

No. 14425.—PROTESTS UNSUPPORTED.—Protest 220917 of H. S. Beer and protest 223563 of E. Van Dyk & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 9, 1907. Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 14426.—PROTEST UNSUPPORTED.—Protest 218663 of A. A. Rosenbush against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14425 (*supra*).

No. 14427.—PROTEST UNSUPPORTED.—Protest 222079 of B. Lowenstein & Bros. against the assessment of duty by the surveyor of customs at the port of Memphis.

Same as No. 14425 (*supra*).

No. 14428.—PROTEST UNSUPPORTED.—Protest 227330 of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News.

Same as No. 14425 (*supra*).

No. 14429.—PROTEST UNSUPPORTED.—Protest 216643 of W. H. Tummonds against the assessment of duty by the collector of customs at the port of Port Huron.

Same as No. 14425 (*supra*).

TREASURY DEPARTMENT, *February 13, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 27917.)

Sulphur.

VANDIVER *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania. January 31, 1907. No. 62 (suit 1856).

REFINED SULPHUR—ROLL SULPHUR.

Roll sulphur *Held* dutiable as refined sulphur under paragraph 84, tariff act of 1897, rather than free of duty as crude sulphur under paragraph 674.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 11977 (T. D. 27458), related to merchandise imported by John L. Vandiver, consisting of sulphur, represented at the

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hearings before the Board by two exhibits, which on chemical analysis were found to contain in one case .0015 per cent of nonvolatile impurities, and in the other .00437 per cent of ash. Note United States *v.* Corbitt (T. D. 27653). The opinion filed by the Board reads as follows:

McCLELLAND, *General Appraiser:* The merchandise covered by these protests is invoiced as "refined roll sulphur." It was assessed for duty at $8 per ton under the provisions of paragraph 84, tariff act of 1897, and protestant claims that it should have been admitted to free entry under the provisions of paragraph 674 of said act.

The merchandise seems to be in all respects the same as that similarly invoiced covered by protest 187088 of Stanley, Jordan & Co., which was held to be dutiable at $8 per ton as here assessed, G. A. 6393 (T. D. 27456). A large mass of testimony has been taken in those cases, and a careful consideration of it strengthens the opinion that the sulphur is not crude, but is in fact refined. The protests are overruled and the decision of the collector is affirmed in each case.

S. Morris Waln, for the importer.

Jasper Yeates Brinton (*J. Whitaker Thompson*, United States attorney, on the brief), for the United States.

McPHERSON, *District Judge:* Decision affirmed.

(T. D. 27918.)

Test of sugar drainings.

UNITED STATES *v.* LUEDER.

U. S. Circuit Court of Appeals, Second Circuit, February 1, 1907. No. 126 (suit 3339).

1. POLARISCOPIC TEST—CUSTOMS REGULATIONS—SUGAR DRAININGS.

   Where the regulations prescribed by the Secretary of the Treasury for determining the polariscopic test of sugar drainings have been substantially followed the determinations thus made are conclusive.

2. SAME—FRACTION OF DEGREE—DE MINIMIS, ETC.

   The average of the polariscopic tests of sugar drainings was found to be 56.025. *Held* that the theory of *de minimis non curat lex* does not require that the fraction should be disregarded and the drainings classed under paragraph 209, tariff act of 1897, as testing "not above fifty-six degrees," rather than as testing "fifty-six degrees and above."

APPEAL from the circuit court of the United States for the southern district of New York.

For decision below see 146 Federal Reporter, 149 (T. D. 27186), affirming an unpublished decision of the Board of United States General Appraisers, which had sustained a protest by A. Lueder against the assessment of duty by the collector of customs at the port of New York. The opinions by the Board, rendered September 9, 1902, were unpublished. They read as follows:

WAITE, *General Appraiser:* The merchandise in question consists of sugar drainings, upon which duty was assessed at the rate of 6 cents per gallon under the provisions of paragraph 209 of the act of July 24, 1897. The rate of duty to be assessed is determined by polariscopic test. If the test indicates more than 56° the duty should be assessed at 6 cents per gallon; if not, it should be assessed at 3 cents per gallon. The only question here is one of fact, as to what the test actually was at the time the goods were imported.

The goods were entered on February 1, 1901, and unloaded about the 19th of February. Samples were taken on the 19th, and tests made at different times from the

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21st of February, 1901, to some time in 1902. The test used as the basis for assessing the duty was arrived at by averaging a number of tests, and showed 56.025°. Thus it will be seen that the reading was carried to one-fortieth of a degree.

It is undisputed that drainings, after fermentation commences, show a higher reading by the polariscope, and that this increase continues during fermentation, and after fermentation ceases it returns to its normal state. The evidence indicates that the tests relied upon by the Government were taken after fermentation had commenced, as the tests seem to have increased for a period after samples were taken, and then fallen away again until they indicated a condition considerably below 56°. We are of opinion that the first tests taken by the Government were more nearly correct than subsequent ones, and there was no occasion for taking the third test. Besides tests made by other competent polariscopists indicate that the test relied upon was erroneous. Hence we conclude that the duty should be assessed as upon drainings showing a test of 56° or under.

The protest is therefore sustained and the collector's decision reversed, with instructions to reliquidate the entry accordingly.

[DISSENTING OPINION.]

DE VRIES, *General Appraiser:* The sole question here is the true polariscopic test of certain sugar drainings. They were assessed for duty at the rate of 6 cents per gallon, as testing 56° and above by the polariscope, and are claimed to be dutiable at the rate of 3 cents per gallon, as testing not above 56° by the polariscope, under the provisions of paragraph 209 of the act of July 24, 1897, which, in so far as pertinent, is hereinafter quoted.

The undisputed facts shown by the record and testimony may be epitomized as follows:

1. The merchandise was imported per *Vala*, which arrived at the port of New York January 31, 1901. This merchandise was entered for consumption February 1, 1901, and the following note made on the entry:

"The within cargo damaged by water and a large quantity of molasses found and landed in 220 packages, February 18, 1901."

2. February 21, 1901, tests were made at the Government laboratory of samples of the 220 packages of drainings. The examining officer on that day took from the drainings the requisite quantity for samples, intermixed the same, and sent to the laboratory one regulation can thereof. This was divided into two parts in the laboratory and each part tested by a different expert, with the results that one part showed a polariscopic registration of 55.9° and the other 56°, with the average of 55.95° as the accepted test of that sample, all of which was duly certified to and recorded by the said examiner. On the same day the second can was forwarded to the laboratory and likewise treated and tested and the results certified and recorded as 56.1°, 56.1°, average and accepted test of sample, 56.1°.

The average of the two accepted tests (55.95° and 56.1°) was then taken as the true test of that sample of the drainings, and due notice thereof given to the importer.

3. No application was made by the importer within the required two days under the provisions therefor in article 1372, Customs Regulations, 1899, providing—

"Should the importer, within two official days after such notice has been sent to him by the appraiser, claim an error in the test so reported and request a retest of any mark or portion of a mark, such retest may be granted." * * *

The following article of said regulations is pertinent and provides:

"1373. In case of retest, the test upon which sugar shall be classified shall be the original test unless such test is higher than the retest, in which case the retest, or the average of the test and retest, shall be taken as the basis of classification, whichever is shown to the satisfaction of the appraiser to be the correct test."

On March 1, 1901, however, many days after time required, the importer filed a request in writing for a retest of the drainings in question, upon which the examiner, however, acted, and a retest was on March 2, 1901, made pursuant to the regulations with the following results:

The first can tested 57° and 57.1°, average and accepted test of the can, 57.05°; the second can tested 56.6° and 56.7°, average and accepted test of that can, 56.65°, which was duly certified to and recorded by the examiner with the average of tests for the accepted test of the "retest" sample, 56.85°.

A further test was made in response to complaint of the importer on March 7, 1901, of one sample can resulting in 57° and 57°, with an average and accepted test of 57°.

Counsel for importer in his brief contends that the first can, which was but one-half of the first sample, tested at the Government laboratory, resulting in 55.9° and 56°, with an average of 55.95°, was the "test" of the drainings, and the second can, which

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was the other half of that sample, giving the result of 56.1° and 56.1°, with an average of 56.1°, was a "retest," and that under article 1373 of the regulations quoted the former should be accepted as the actual test. I do not concur in this view. It required both of these cans to be tested and the average of the accepted tests of each to comply with the regulations for the *first test*. Moreover, importer had not as yet filed his request for a "retest," and the retest in compliance therewith was subsequently made. The "retest" contemplated by the regulations (art. 1373) is that made upon application of the importer as prescribed in the preceding article thereof (1372), and the test of a single can or part of a sample made by the laboratory at the instance of the examiner is not within purview of that regulation.

3¼. On November 21, 1901, a test made under the supervision of this Board in the Government laboratory showed a polariscopic result of 52.6°; second, 52.8°; average and accepted test, 52.7°.

4. February 23, 1901, samples of these drainings were tested by Sherer Brothers, chemists, of New York, who returned that they tested by the polariscope 54.7°, and a member of that firm testified that a very recent test of the same sample showed only 50°.

5. February 28, 1901, samples of the drainings in question were tested by Sharples & Bennett, chemists, New York, who returned them at the polariscopic test of 53°. On March 4, 1901, a subsequent test by the same firm of the drainings was returned at 52.6°.

6. It appears that the drainings, when examined by Mr. Sherer at least, were and had been undergoing fermentation; that that state usually lasts about ten days; that its effect is to first raise the polariscopic test and then resume the normal, *unless* it continues to attack the sugar, in which case it reduces all the sugar to alcohol. It does not appear satisfactorily whether or not these drainings were undergoing fermentation at the time imported, nor *when* such fermentation commenced, and only by inference whether or not it ceased.

7. It appears from the importer's witnesses that chemists are not able to read the polariscope within from .2 to 1 degree of one another, and that in molasses they sometimes vary 2 or 3 degrees in a test; and that commercially about .5 of 1 degree is allowed in both sugar and molasses test for such variations; that the Government regulations are different in their requirements from the commercial tests, and Mr. Sherer stated:

"If I had followed the Government articles I would probably have got my readings .3° to .4° higher than I did."

8. Subsequent tests made by A. Weichert, April 10, 1902, showed 52°; by G. Grund and Charles F. Judd, April 11, 1902, showed tests of 54.8° and 55°, respectively.

The applicable provision of law is as follows:

"209. Sugars * * * concrete and concentrated molasses, testing by the polariscope; * * * molasses testing above forty degrees and not above fifty-six degrees, three cents per gallon; testing fifty-six degrees *and above*, six cents per gallon; sugar drainings and sugar sweepings shall be subject to duty as molasses or sugar, as the case may be, according to polariscopic test."

Regulations were duly promulgated by the Secretary of the Treasury under authority of law (sec. 251, Rev. Stat.) for the enforcement of this act. Among other things they provide:

"ART. 1362. Raw or unrefined sugars not above No. 16 Dutch standard in color shall be separated by the experts in the examining room according to the marks, and *the samples of each mark shall be thoroughly mixed together*, reducing if necessary by quartering, until the proper amount is secured for the general sample. From such general sample *two round tin sample boxes* of uniform size, made to contain not less than 1 pound each, shall be closely packed full of sugar, and *transmitted forthwith to the laboratory for polariscopic test*. The boxes must be so made as to be practically airtight when closed. The samples of a mark first sent to the laboratory shall be known as 'first samples,' and shall be so entered in the record of tests as hereinafter provided.

"ART. 1364. In conformity with the principles of commercial usage and in order to secure correct results in the testing of sugars for the assessment of duty, it is directed that at least *two tests shall be made of each sample* of sugar sent to the laboratory and of its several products, as specified in the law, except molasses polarizing more than 2° above or below 40 or 56 degrees; and the *test* which shall be *accepted* for the classification of a mark shall be an *average of tests as hereinafter provided*, such averages *to be carried to five places of decimals when called for by the figures*.

"ART. 1365. Samples sent to the laboratory as provided in articles 1362 and 1363 shall be carefully mixed. Sugars containing hard lumps not readily crushed and mixed by hand must be mixed in a mortar or by other adequate means. After thorough

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mixing, *the respective* samples shall be divided into *two equal portions, each* of which shall be tested by different experts. Should the results of the two separate tests of a sample so made correspond within three-tenths of 1° *the average of the two* shall be accepted as the test of such sample.

"ART. 1368. The tests of the *two samples* of a mark *first sent* to the laboratory, having been duly reported, shall be permanently entered in the record of tests according to their serial numbers, respectively, together *with the accepted test of each sample,* determined in manner as hereinbefore provided. Should such *accepted tests* correspond within five-tenths of 1° *the average of the two shall be taken* as the true test of the sugar.

"ART. 1372. When the test of the sugar has been determined as provided in articles 1364 to 1370, both inclusive, the appraiser shall immediately notify the importer, by messenger when practicable, of such test. Should the importer, *within two official days* after such notice has been sent to him by the appraiser, claim an error in the test so reported *and request a retest* of any mark or portion of a mark, such retest may be granted, provided, on evidence furnished, such claim shall appear to the appraiser to be well founded; but in no case shall a retest be granted when *the error claimed* is shown to be less than four-tenths of 1°. Samples for retest shall be made up from the reserved portion of the mark and shall be treated in all respects as provided for original tests.

"ART. 1373. In case of retest, the test upon which the sugar shall be classified shall be the original test unless such test is higher than the retest, in which case the retest, or the average of the test and retest, shall be taken as the basis of classification, whichever is shown to the satisfaction of the appraiser to be the correct test."

An examination of the facts found in connection with the regulations cited shows that the examiner substantially pursued these regulations in determining the polariscopic test of the drainings in question. The one deviation, if any, was the fact that the second can of samples was sent to the laboratory after the examination of the first. Both examinations were made, however, during the same day and the samples were intermixed before being placed in the can and two examinations of each sample were made in the laboratory and the averages duly made as prescribed by the regulations. The importer urges two contentions in support of his protest, first, that the polariscopic test by the Government official is high, and that the polariscopic tests made by the importer's chemists show a lower degree, and, second, that the degree of the test above 56° returned by the Government experts is so small that the actual polariscopic test becomes a matter of doubt, which doubt should be resolved in favor of the importer.

I fail to see how the evidence in this record tends to the establishment of the claim that the test found by the Government officials is erroneous, or indeed involved in doubt. I do not believe it is within the discretion of the examining officials, under the regulations of the Department, to disregard a fractional registry above 56° in such cases. Not, at least, unless error in reading is clearly established. An applicable provision of law similar in principle has been construed by this Board in G. A. 1795 (T. D 13483). In that case the statute the subject of construction was paragraph 358 of the act of 1890, which levied duty on "stockings, hose, etc., *valued* at *more than sixty cents* per dozen pairs and not more than two dollars per dozen pairs," etc. The valuation placed upon them was 60 cents and *a quarter of a mill per dozen pairs.* The importers contended that this small fraction of a mill was so insignificant that it ought not to enter into the computation of values. The Board said:

"There are cases where the law disregards the fractional part of a day in computing time, but the principle upon which such cases rests has no application to computations of value; nor does the maxim '*de minimis lex non curat*' apply, in our judgment. The language of the paragraph in question is '*more* than sixty cents,' and on reflection we can perceive no reason why a fraction of a cent in value over a specific sum should not be construed to mean *more* than such sum."

Moreover, it appears from the reading of the regulations that fractions of a polariscopic registration even to the ten-thousandths of a degree shall be regarded. The latter part of article 1364 reads:

"ART. 1364. * * * And the test which shall be accepted for the classification of a marking shall be an average of tests as hereinafter provided; such averages to be carried to *five places of decimals when called for by the figures.*"

In my judgment, the unmistakable intent of that provision of the regulations is that in determining the polariscopic test and what is *more* than 56° polariscopic test, the calculations shall be carried to 5 decimal places; and evidently, when that calculation shall, within the radius of 5 decimal places, produce a fraction which reads above 56°, it shall be observed by the examining officers and become the accepted test. In the case at hand the calculations showed that at the second decimal figure a fraction was present above 56°. I do not see how, in the presence of such a regulation, we are at

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liberty to disregard the fractional part of the test which comes plainly within the purport and intent of the applicable and unimpeached regulations. It must be borne in mind the duty of impeaching the return of the collector is upon the importer, upon whom rests the burden of proof in the case.

The evidence offered by the protestant is in every wise reconcilable with the correctness of the Government test, and hence does not disprove it. It would seem from the facts found and the record that the polariscopic test of drainings varies from time to time. Particularly is this true where fermentation has set in. But there is nothing in the record which shows when fermentation set in and when it ceased. The rate of duty levied upon sugar drainings is a specific rate. The condition of the drainings for assessment purposes in such cases is the condition in which they were when imported.

It appears from the record that the vessel arrived at the port of New York on January 31, 1901; that the merchandise was unloaded February 18, 1901, and that the first test by the Government officials was made on February 21, 1901. Evidently this was as soon as practicable after importation. It will be noted, also, that this test was the most proximate one to the date of the actual importation of the merchandise; that the next proximate test was that made by Mr. Sherer—a recognized and competent chemist of experience in determining polariscopic tests of sugar and drainings—on February 23, 1901, which showed 54.7°. This is the most exact evidence, and to my mind the most reliable offered in disproof of the correctness of the tests by the Government officials. It was made two days after the Government tests and from a different sample. The other tests by the importer were many days subsequent. The degree of thoroughness of that test is not shown by the record. It resulted, however, in a difference of 1.325° from the accepted test of the Government by the standard of which the drainings in question were assessed. Mr. Sherer, however, testified (and he was a witness for the importer) that chemists were not able to read the polariscope within 1 or 2 degrees of one another. He further testified that his method of testing such differed from the Government's method, and that had he tested the drainings in accordance with the regulations of the Government his test would have shown three or four tenths of a degree higher. I do not think this is sufficient evidence, or evidence which, to any material extent, rebuts the return of the Government examiner as to the correct test of the drainings in question. The examiner returns 56.025°; Mr. Sherer returns 1.325° less than this. He testifies that had he pursued the Government's regulations his test would have been three to four tenths of a degree higher, and that different chemists will read the polariscope from 1 to 2 degrees differently.

In my judgment, this does not establish that the Government test was erroneous; on the contrary, its absolute correctness is perfectly harmonious with this return, under the testimony of Mr. Sherer. Indeed, his testimony, to my mind, rather conduces to the correctness of the Government's test. For if it be true that different chemists will read the polariscope from 1 to 2 degrees in sugar and 3° in molasses differently, we could no more say that Mr. Sherer was right than that the Government was right, and that the tests made by two different persons differ to the extent of 1.325° no more than establishes Mr. Sherer's proposition, to wit, that different persons read the polariscope differently, and one is as likely to be correct as the other. The burden being upon the importer to disprove the correctness of the Government return, this evidence, in my opinion, fails to do so. But, two experts have read the polariscope and averaged their results in order to establish the Government's test, while there is no evidence in the record of such proof of dual calculation on the part of Mr. Sherer; and it is, therefore, more probable that the Government test, which is the average of the reading of two experts, be true than that of Mr. Sherer alone. At most it only establishes the proposition that different chemists, by reason of visual differences, read the polariscope differently. It may be accepted as true and still be perfectly consistent with the Government's test being absolutely accurate. In my judgment, the force of the testimony of Messrs. Weichert, Grund, and Judd is subject to the same considerations. The examinations were made from the same sample within one day of each other, and returns made of 52°, 54.8°, and 55°, at a time almost three months after the importation of the goods. Under the testimony given they are perfectly reconcilable with the correctness of the Government return and in nowise disprove it.

It is equally important in the determination of tariff duties by any test, such as the polariscopic test, to have the various tests made uniform as well as exact. To establish a uniformity in the reading of the tests of sugar by the various experts at the different ports in the United States, the Government regulations provide for a constant interchange of tests of the same materials in order that they may compare one with the other, their accuracy and uniformity of readings, and that duties may be uniformly levied at the different ports. See Customs Regulations, 1899 (arts. 1382 to 1386, inclusive). It is of equal importance to have the tests made of the various importations at the same port *uniform* as well as *exact*. Granting that the Government's

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expert's readings may be different from that of some other expert, if all of the tests are made by the same expert there is uniformity of results and of duties levied. If, however, the test to be arrived at is in one case determined by taking the average of the tests made by the Government's experts and the test made by some chemist not in the Government service, introduced to raise a doubt as to the accuracy of the Government's return, as is here done, and the duties levied upon another cargo in another case are to be levied at a rate determined by a test made by the Government chemists averaged with a test of another or second chemist not in the Government employ introduced for the same purpose, the uniformity of tests and of duties upon sugar at that port, as well as other ports, would at once be destroyed. This must be admittedly true where there is a visual difference in readings.

I think that where a law is enacted providing that the rate of duty on sugar shall be governed by a mechanical, to wit, polariscopic test, and Congress has committed to the Treasury Department the power to make regulations to govern the same, and that Department to that end has promulgated regulations and has therein confided to two or more examiners at each port the determination of this test, uniformity and accuracy are as nearly secured as practicable. And while it may be true, as in this case, some hardship may be wrought in specific instances, I do not feel justified in subscribing to a principle which in my judgment will become authority in future cases which may result in admitting to any port sugar the test of which for dutiable purposes has been made other than in a substantial pursuance of Government regulations.

The regulations provide for the ascertainment of the polariscopic test by two Government experts conducting a series of tests calculated to arrive at proximate accuracy. These have been pursued. To say that the tests of other experts shall be held to establish a doubt and to that end be made the subject of average with the Government tests, introduces new experts into the Government service, practically appoints others than the duly appointed officers for that purpose, disregards the findings of those officials charged with that duty, and recognizes methods of procedure in determining tests that are admittedly at variance with those only prescribed. Certainly a license of such procedure would entirely destroy any uniformity of tests and greatly jeopardize if not destroy their accuracy. Whenever this is done it seems to me it will be a *pro tanto* deviation from the rules and regulations laid down by the duly authorized authority for that purpose, and *pro tanto* establishing a test or average of tests which are without and beyond these regulations. Such procedure should not be indulged in any case of mere doubt at least, but only in cases, if at all, of clearly erroneous findings on the part of the Government officials. This would seem to be particularly true where opportunity is given by the regulations (art. 1372) for reviewing the findings of the examiner, and which opportunity has been exercised by the importer with results that confirm the correctness of the test returned by the examiner. For these reasons I am constrained to dissent from the conclusions reached by my colleagues herein.

J. Osgood Nichols, assistant United States attorney, for the United States.
William J. Gibson, for the importer.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, affirming a decision of the Board of General Appraisers which reversed the decision of the collector at the port of New York, touching the classification for duty of certain imported merchandise under the tariff act of 1897.

PER CURIAM: The merchandise in question consists of "sugar drainings." It is the molasses that oozes from bags and other packages of sugar while in transit on shipboard, and which is gathered up and subsequently used for manufacturing alcohol, etc. The relevant paragraph is:

209. Sugars * * * testing by the polariscope not above seventy-five degrees, ninety-five one-hundredths of one cent per pound, and for every additional degree shown by the polariscopic test, thirty-five one-thousandths of one cent per pound additional, and fractions of a degree in proportion; * * * molasses testing above forty degrees and not above fifty-six degrees, three cents per gallon; testing fifty-six degrees and above, six cents per gallon; sugar drainings and sugar sweepings shall be subject to duty as molasses or sugar, as the case may be, according to polariscopic test. * * *

The present controversy is whether the importation was shown by polariscopic test to be "not above fifty-six degrees" or to be "fifty-six degrees and above." The

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Board and the circuit court both found that it was below 56. Their opinions indicate that this conclusion was in part induced by a consideration of tests made by polariscopists other than those employed by the Government to make the official tests. Suggestion is made that fermentation had set in when the first tests were made, but there is nothing in the record to show when it set in or when it ceased. And whatever be the fact as to this, the condition of drainings for assessment purposes is the condition in which they were then imported, and the official test was nearer in time to the date of importation than was any subsequent test.

There is no controversy as to the fundamental facts—the observed facts as distinguished from inferred facts—and they are set forth with great fullness in the dissenting opinion of General Appraiser De Vries, which also contains all relevant quotations from the Treasury regulations governing the method of conducting polariscopic tests. This opinion, although written two years before, is fully in accord with the decision of this court in United States *v.* Bartram Brothers (131 Fed. Rep., 833; T. D. 25395), and it seems unnecessary to do more than express our concurrence with the dissentient General Appraiser in disposing of this appeal.

As was pointed out in the Bartram case, Congress left it to the Secretary of the Treasury to provide by appropriate regulations for the taking of tests by polariscope. The evidence in that case showed that the test was of so delicate a character that there were such sources of error, such differences of result when the same sample was tested or the same readings taken by different individuals; that it was essential to have some well-settled method, which, while not always absolutely accurate, should be at least uniform in its application. Briefly stated, the method prescribed is to send to the laboratory two samples of each mark in two separate sample boxes, and at least two tests are required to be made of each sample. The respective samples are divided into two equal portions, which shall be tested by different experts, and the results averaged according to a carefully prescribed method. The tests of the two samples of a mark first sent to the laboratory, when they correspond within five-tenths of a degree, are accepted and their average taken as the true test of the sugar. Provision is made for a retest upon the importer's application.

An examination of the record shows that the dissenting General Appraiser is entirely correct in the statement that the regulations were substantially followed in determining the polariscopic test of the drainings in question and that "the one deviation, if any, was the fact that the second can of samples was sent to the laboratory after the examination of the first. Both [sets of samples were taken, prepared, and put in the two sample cans and both] examinations were made during the same day, and the samples were intermixed before being placed in the can, and two examinations of each sample were made in the laboratory, and the average duly made as prescribed by the regulations." The first can was divided into two portions, each part tested by a different expert, with the result that one part showed 55.9° and the other 56°, giving 55.95° as the accepted test of that sample. The second can, similarly tested, showed 56.1° for each portion and, of course, 56.1° for the accepted test of that sample. The average of the tests of the contents of the two sample boxes, thus taken at the same time and examined on the same day (such tests corresponding within five-tenths of a degree, art. 1368), was properly taken as the "true test" of the molasses. And a subsequent retest made at the request of the importer showed a higher percentage. The average of the four readings on test of the two sample boxes first sent to the laboratory was 56.025. The importer contends that this should not be considered as "56° and above" because the fraction is so small, on the theory *de minimis non curat lex.* We do not assent to this proposition, the statute itself refers to fractions of a degree, and the Treasury regulations (art. 1364) provide that averages shall be carried to 5 places of decimals when called for by the figures.

The decision of the circuit court is reversed.

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(T. D. 27919.)

Embroidered screens.

LICHTENSTEIN MILLINERY COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 4, 1907. Suit 4085.

EMBROIDERED SCREENS—NOSCITUR A SOCIIS.

Under the proviso of paragraph 339, tariff act of 1897, prescribing "that no * * * article, * * * when embroidered, * * * shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed," wooden screens embroidered with silk are dutiable as silk embroideries under paragraph 390, a contrary result not being required by the rule *noscitur a sociis.*

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 7668 (T. D. 26649), related to an importation at the port of New York, with regard to which the Board of General Appraisers affirmed the assessment of duty. The case turned on the construction of the proviso to paragraph 339, tariff act of 1897, which is as follows:

Provided, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed.

Note Carter *v.* United States (143 Fed. Rep., 256; T. D. 27135). The opinion filed by the Board reads:

HOWELL, *General Appraiser:* The merchandise consists of a three-piece folding screen, made of wood, silk (embroidered), glass, and a printed picture. It was returned by the appraiser as "silk embroidered article," and duty was assessed thereon by the collector at the rate of 60 per cent ad valorem under the provisions of paragraph 390 of the tariff act of 1897. The claim in the protest is that the screen is composed in chief value of wood, and properly dutiable at the rate of 35 per cent under paragraph 208 of said act.

The testimony taken at the hearing is vague and indefinite, and leaves us in great doubt as to the component material of chief value in this article, but we think the determination of this question is immaterial; for it is admitted that the screen is composed in part of silk embroidery, and it would therefore appear to be dutiable as assessed by virtue of the proviso to paragraph 339 of said act of 1897. Carter *v.* United States (137 Fed. Rep., 978; T. D. 26220); G. A. 5907 (T. D. 26006); G. A. 6042 (T. D. 26371).

The protest is overruled and the decision of the collector is affirmed.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The merchandise, consisting of a three-panel folding screen, 5 feet and 10 inches high, the frame being of wood, carved and gilded, and being about 6 inches wide, the panels being of silk, embroidered and having inset a printed picture covered by a glass frame, was assessed for duty as a silk-embroidered article at the rate of 60 per cent ad valorem under the provisions of paragraph 390 of the existing tariff act. The importer claims the screen should be held dutiable at 35 per cent under paragraph 208 as an article composed in chief value of wood.

The silk embroidery upon the panels of the screen unquestionably enhances its value to an appreciable extent; and accordingly the assessment would seem to have been proper by virtue of the proviso contained in paragraph 339, even though wood was the component material of chief value. The importer contends that paragraph 390 refers only to such articles as are embraced *ejusdem generis* with laces, lace edgings, insertings, galloons, chiffon, or other flouncings and trimmings, and that the screen is

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not in any way *ejusdem generis* with the articles mentioned. I am satisfied that the doctrine of *noscitur a sociis* does not apply and that the case is controlled by the principle enunciated in United States *v.* Altman (107 Fed. Rep., 15) and Carter, Webster & Co. *v.* United States (137 Fed. Rep., 978; T. D. 26220). Such appears, also, to have been the opinion of the Board.

The decision is affirmed.

(T. D. 27920.)

Buffalo hides.

UNITED STATES *v.* SCHMOLL.

U. S. Circuit Court, Southern District of New York. February 4, 1907. Suit 4187.

1. BUFFALO HIDES—HIDES OF CATTLE.

   Hides of the domesticated East India buffalo are dutiable as "hides of cattle," under paragraph 437, tariff act of 1897.

2. HIDES OF CATTLE—"CATTLE."

   In construing the expression "hides of cattle," in paragraph 437, tariff act of 1897, *Held* that it was not used in any commercial sense which would limit it to hides, but that the term "cattle" should be understood to be used with the broader meaning which embraces domestic animals of the cattle family, including the buffalo.

3. MEANING OF WORDS.

   Where no commercial meaning of a term used in a tariff act is established, the ordinary dictionary definition must govern.

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see G. A. 6268 (T. D. 27021), sustaining protests of Armand Schmoll against the assessment of duty by the collector of customs at the port of New York. Note T. D. 27084, directing the application for review.

D. Frank Lloyd, assistant United States attorney, for the United States.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importer.

HAZEL, *District Judge:* This controversy arises from the laying of duty by the collector at the rate of 15 per cent ad valorem under the provisions of paragraph 437 of the tariff act of 1897, on hides of buffaloes imported from East India. Said provision reads:

> Hides of cattle, raw or uncured, whether dry, salted, or pickled, fifteen per centum ad valorem: *Provided*, That upon all leather exported, made from imported hides, there shall be allowed a drawback equal to the amount of duty paid on such hides, to be paid under such regulations as the Secretary of the Treasury may prescribe.

The importer protested, claiming that the hides are entitled to free entry under the provisions of paragraph 664 for "hides not especially provided for in this Act." The Board sustained the protest and held that the goods were entitled to free entry as contended by the importer.

The hides in question are conceded to have been taken from domestic animals of the bovine species. The testimony of Doctor Hornaday and other witnesses for the Government, showing that in India the buffalo is used practically for all purposes that cows, steers, and oxen are used in the United States, is not disputed. The witness Conklin, for the United States, testified that the buffalo is a ruminant belonging to the cattle or to the bovine species. In the case of Rossbach *v.* United States (116 Fed. Rep., 781, affirmed on appeal, 122 Fed. Rep., 1020), hides of the East India buffalo, a domestic animal of the bovine species, were held to be cattle hides. Subsequently the circuit

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court of appeals in the case of United States *v.* Winter & Smillie (134 Fed. Rep., 841; T. D. 25901; suit 2851), held that hides of the mud buffalo of the Straits Settlements, an animal killed in the chase, were not included in the term "hides of cattle." The case at bar would seem to be closely analogous to the Rossbach case.

The word "cattle" is defined by the Standard Dictionary as "domesticated bovine animals, as oxen, cows, bulls, and calves, etc.," and by the Century Dictionary as "(2) live stock; domestic quadrupeds which serve for tillage and other labor or as food for man." Evidence was given by the importer to show that the term "hides of cattle," as used in the trade of this country prior to the enactment of the tariff law did not include buffalo hides and that buffalo hides were specially distinguished from cattle hides; but the existence of a commercial designation of the term "hides of cattle" or "cattle hides," as used interchangeably, which uniformly and definitely excluded buffalo hides therefrom, is not thought to have been satisfactorily established. It may be conceded that in popular speech the term "cattle" is used in the United States in a restricted sense and that it more specially is applied to the group of so-called straight back cattle (cows, oxen, steers, and bulls) as distinguished from the hump cattle of India and Africa. See definition of Webster. Where, however, no commercial term or meaning is established, the ordinary dictionary definition of the words used in the tariff act must govern. Milne *v.* United States (115 Fed. Rep., 410); United States *v.* Nordlinger (121 Fed. Rep., 690); Swan *v.* Arthur (103 U. S., 597); O. G. Hempstead & Son *v.* Thomas (122 Fed. Rep., 588). Congress evidently for the purpose of levying a tariff duty had in mind the broad definition of the word "cattle," which concededly includes the domesticated buffalo. The term "hides of cattle" was not used in its narrow sense but rather to describe the species—i. e., domestic animals of the cattle family such as are concededly useful for the purposes which prompted the levying of a duty upon hides. The proofs show that the East India buffalo hides are useful in the manufacture of leather, and the intent of Congress plainly was the protection of the cattle industries. If the existence of a commercial designation of the term "hides of cattle" prior to the enactment of the tariff laws had been established, a different conclusion would be warranted, Arthur *v.* Morrison (96 U. S., 108); but without persuasive proof of a commercial designation the evident intent of Congress must prevail.

The classification of the collector was correct, and the decision of the Board must be reversed.

(T. D. 27921.)

Flax-wool fabrics.

UNITED STATES *v.* WALSH.

U. S. Circuit Court, District of Massachusetts. February 5, 1907. No. 159 (suit 1849).

FLAX-WOOL FABRICS—MANUFACTURES OF WOOL.

The proviso in paragraph 391, tariff act of 1897, providing that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool," relates only to goods composed of wool and silk, and therefore does not require that fabrics in chief value of flax and in part of wool should be removed from the application of the provision in paragraph 346, tariff act of 1897, for fabrics of which flax is "the component material of chief value," to the provision in paragraph 366 for cloths and other manufactures "made wholly or in part of wool."

ON application for review of a decision of the Board of United States General Appraisers.

For decision below see Abstract 11698 (T. D. 27409), which, on the authority of G. A. 5728 (T. D. 25431), reversed the assessment of duty by the collector of customs

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at the port of Boston on an importation by F. T. Walsh. Note United States *v.* Johnson (T. D. 27897), United States *v.* Scruggs, Vandervoort & Barney Dry Goods Company (147 Fed. Rep., 888; T. D. 27652), Benoit *v.* United States (T. D. 26823), Rouss *v.* United States (120 Fed. Rep., 1021), and United States *v.* Slazenger (113 Fed. Rep., 524).

Asa P. French, United States attorney, and *William H. Garland*, assistant United States attorney, for the United States.

Norman W. Bingham, for the importer.

LOWELL, *Circuit Judge:* This is a proceeding to review a decision of the Board of General Appraisers imposing a duty upon woven fabrics called lappings at the rate of 50 per cent ad valorem under paragraph 346 of the tariff act of 1897. The fabric has a warp of flax, and a weft or filling of wool. Flax is the component material of chief value. The Government contends that the fabric is dutiable under paragraphs 366 and 391. The paragraphs in question read as follows:

PAR. 346. Woven fabrics or articles not specially provided for in this Act, composed of flax, hemp, or ramie, or of which these substances or either of them is the component material of chief value, weighing four and one-half ounces or more per square yard, when containing not more than sixty threads to the square inch, counting the warp and filling, one and three-fourths cents per square yard; containing more than sixty and not more than one hundred and twenty threads to the square inch, two and three-fourths cents per square yard; containing more than one hundred and twenty and not more than one hundred and eighty threads to the square inch, six cents per square pard; containing more than one hundred and eighty threads to the square inch, nine cents per square yard, and in addition thereto, on all the foregoing, thirty per centum ad valorem: *Provided*, That none of the foregoing articles in this paragraph shall pay a less rate of duty than fifty per centum ad valorem. Woven fabrics of flax, hemp, or ramie, or of which these substances or either of them is the component material of chief value, including such as is known as shirting cloth, weighing less than four and one-half ounces per square yard and containing more than one hundred threads to the square inch, counting the warp and filling, thirty-five per centum ad valorem.

For earlier legislation, see tariff of 1894 (28 Stat., 530), paragraph 277; tariff of 1890 (26 Stat., 593), paragraph 371; tariff of 1883 (22 Stat., 507).

PAR. 366. On cloths, knit fabrics, and all manufactures of every description made wholly or in part of wool, not specially provided for in this Act, valued at not more than forty cents per pound. the duty per pound shall be three times the duty imposed by this Act on a pound of unwashed wool of the first class; valued at above forty cents per pound and not above seventy cents per pound, the duty per pound shall be four times the duty imposed by this Act on one pound of unwashed wool of the first class, and in addition thereto, upon all the foregoing, fifty per centum ad valorem; valued at over seventy cents per pound, the duty per pound shall be four times the duty imposed by this Act on one pound of unwashed wool of the first class and fifty-five per centum ad valorem.

For earlier legislation see tariff of 1894 (28 Stat., 530), paragraph 283; tariff of 1890 (26 Stat., 596), paragraph 392; tariff of 1883 (22 Stat., 508).

PAR. 391. All manufactures of silk, or of which silk is the component material of chief value, including such as have india-rubber as a component material, not specially provided for in this Act, and all Jacquard figured goods in the piece, made on looms, of which silk is the component material of chief value, dyed in the yarn, and containing two or more colors in the filling, fifty per centum ad valorem: *Provided*, That all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool.

For earlier legislation see tariff of 1894 (28 Stat., 532), paragraph 302; tariff of 1890 (26 Stat., 598), paragraph 414; tariff of 1883 (22 Stat., 510).

It is not disputed that, in the absence of paragraph 391, the provisions of paragraph 346 would control. In effect this was decided in Hartranft *v.* Meyer (135 U. S , 237), where the controversy concerned the importation of a fabric made partly of wool and partly of silk. The paragraph of the wool schedule there in question was substantially like paragraph 366 of the Dingley act, and the paragraph of the silk scale

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resembled paragraph 346 of the Dingley act, with the substitution of silk for flax. The reasoning of the Supreme Court in that case applies to the case at bar.

Whatever interpretation be given to the proviso of paragraph 391, I can not think that it was intended to control the language of all the other paragraphs of the tariff act and to make many of them nugatory, as is contended by the Government. Probably the proviso will be construed best in accordance with the intention of Congress if it be limited to fabrics part of silk and part of wool. The importers have made out their case, and the decision of the Board of General Appraisers is affirmed.

(T. D. 27922.)

Button molds.

HÖRMANN *v.* UNITED STATES. UNITED STATES *v.* HÖRMANN.

U. S. Circuit Court of Appeals, Second Circuit. February 4, 1907. No. 92 (suit 4086).

1. BUTTON SHANKS—BUTTON MOLDS—PARTS OF BUTTONS.

So-called button shanks, consisting of metal disks in pairs, and so constructed that when a piece of cloth is placed on top of one of the disks and the two are subjected to pressure a cloth-covered button is produced, are classifiable under paragraph 414, tariff act of 1897, as "button molds" of metal, rather than as "parts of buttons."

2. PARTS OF BUTTONS.

Paragraph 414, tariff act of 1897, enumerates in the beginning "buttons or parts of buttons and button molds," as dutiable "at the following rates;" but the schedule of such rates specifies only "buttons" of various classes, without any mention of button parts or molds. *Held* that this specification of "buttons" should be construed as including the other articles enumerated in the beginning of the paragraph, as though reading "buttons or parts of buttons and button molds."

CROSS appeals from the circuit court of the United States for the southern district of New York.

For decision below see 144 Federal Reporter, 707 (T. D. 26975), reversing G. A. 6142 (T. D. 26687), relating to goods imported by Hörmann, Schütte & Co.

Everit Brown for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before WALLACE, TOWNSEND, and COXE, Circuit Judges.

Cross appeals from order of the United States circuit court for the southern district of New York, reversing the decision of the Board of General Appraisers, who had affirmed the action of the collector in his assessment of duty on certain merchandise under the act of 1897. The opinion of the court below is reported in 144 Federal Reporter, 707 (T. D. 26975).

TOWNSEND, *Circuit Judge:* The question involved in these appeals is as to the construction of paragraph 414 of the act of 1897. Said paragraph is as follows:

Buttons or parts of buttons and button molds or blanks, finished or unfinished, shall pay duty at the following rates, the line button measure being one-fortieth of one inch, namely: Buttons known commercially as agate buttons, metal trousers buttons (except steel), and nickel bar buttons, one-twelfth of one cent per line per gross buttons of bone, and steel trousers buttons, one-fourth of one cent per line per gross; buttons of pearl or shell, one and one-half cents per line per gross; buttons of horn, vegetable ivory, glass, or metal, not specially provided for in this Act, three-fourths of one cent per line per gross, and in addition thereto, on all the foregoing articles in this paragraph, fifteen per centum ad valorem; shoe buttons made of paper, board,

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papier mache, pulp or other similar material, not specially provided for in this Act, valued at not exceeding three cents per gross, one cent per gross; buttons not specially provided for in this Act, and all collar or cuff buttons and studs, fifty per centum ad valorem.

The articles in question consist of pairs of metal disks, so constructed that, when a piece of cloth is placed on top of one of the disks and the two are subjected to pressure, a cloth-covered button is produced. These pairs of disks are commercially known as button shanks. They are concededly "parts of buttons and button molds." The appraiser returned them as metal-button molds or parts of metal buttons, and the collector assessed each pair at three-fourths of 1 cent per line per gross and 15 per cent ad valorem. A line is one-fortieth of an inch, and is used as a unit of measurement from the center to the circumference of the disk.

The importers protested against said assessment, claiming that the articles were dutiable either at only 15 per cent ad valorem under said paragraph 414, as one of the "foregoing articles" not covered by the word "buttons," or at 50 per cent ad valorem under said paragraph, as "buttons [or parts of buttons] not specially provided for," or at 45 per cent ad valorem under paragraph 193 of said act, as "articles * * * not specially provided for * * * composed * * * of * * * metal * * * partly or wholly manufactured."

The Board of General Appraisers overruled the protests and affirmed the action of the collector, on the ground that the goods were metal molds or parts of buttons. The importers appealed; and the court below reversed said decision, and held that the articles should be assessed at 45 per cent ad valorem under said paragraph 193 of the act. From this decision both parties appeal.

This case has been argued upon the fact, conceded by both sides, that these blanks are parts of buttons and that it was the intention of Congress, as manifested by the language of said paragraph, that parts of buttons should be subjected to some duty. Counsel for the United States insists that the words "or parts of buttons" should be read into the paragraph wherever a class of buttons is provided for, and that then the relevant portions of the paragraph would read as follows:

Buttons of * * * metal [or parts of buttons of metal], * * * three-fourths of one cent per line per gross, and in addition thereto, on all the foregoing articles in this paragraph, fifteen per centum ad valorem.

But there are two objections to this construction. These disks are not parts of buttons of metal or of metal buttons, but of cloth-covered buttons, as distinguished from metal buttons; and, therefore, as there is no specific provision for cloth-covered buttons or parts thereof, they could only be assessed as parts of buttons not specially provided for at 50 per cent ad valorem. Again, if these disks should be thus assessed for duty as parts of buttons, each disk, being a part of a button, would pay the same rate of duty, according to line measurement, as a whole button.

We think these objections may be obviated, and the intention of Congress may be effectuated, by construing the provisions of the paragraph to refer to what these articles are proved and conceded to be—that is, not only parts of buttons, but something more, namely, button molds. The two witnesses testify that they are button molds, and one of the witnesses testifies as follows:

Q. Do you call both parts of those things that match each other button molds, or do you call the two parts together button molds?—A. The two parts together.

By this construction the pertinent portion of the paragraph may be applied as though it read "buttons [or parts of buttons and button molds] of * * * metal;" and thus the intention of Congress is effectuated, while only one assessment of duty is laid on each pair of disks constituting a button mold.

The decision of the circuit court is reversed, and the decision of the Board of General Appraisers affirming the action of the collector is affirmed.

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(T. D. 27923.)

Cherries prepared.

Decision of United States circuit court of appeals for the second circuit in Causse Manufacturing Company *v.* United States (T. D. 27752) acquiesced in.

TREASURY DEPARTMENT, *February 13, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of the A. L. Causse Manufacturing Company *v.* United States (suit 3913; T. D. 27752) was recently decided in the United States circuit court of appeals for the second circuit adversely to the Government.

The merchandise in suit consisted of cherries from which the pits had been removed, the fruit then washed several times in water, as a result of which the dirt and free juices were removed, then exposed to sulphur fumes, and packed in casks in a weak solution of salt water in order to preserve the fruit in transit. Duties were assessed at the rate of 1 cent per pound and 35 per cent ad valorem under paragraph 263 of the tariff act of July 24, 1897. The importers protested, claiming the merchandise to be dutiable at the rate of 2 cents per pound under paragraph 262 under the enumeration for fruits prepared in any manner, not specially provided for, which claim was sustained by the United States circuit court of appeals in this case.

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(28036.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27924.)

Drawnwork.

G. A. 6452 (T. D. 27644) to control in the classification of so-called linen drawnwork, etc., imported after May 15, 1907.—T. D. 27688 modified accordingly.

TREASURY DEPARTMENT, *February 14, 1907.*

SIR: Referring to Department's letter of November 1, 1906 (T. D. 27688), wherein collectors of customs were instructed to assess duty upon so-called linen drawnwork which had been ordered prior to October 15, 1906, under the practice prevailing prior to the decision of the Board of United States General Appraisers, dated October 3,

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1906, G. A. 6452 (T. D. 27644), I have to advise you that the Department has concluded to modify the instructions referred to as follows:

Merchandise of the character under consideration which is imported after May 15, 1907, shall be classified in harmony with the decision of the Board of October 3, 1906 (*supra*).

Respectfully, JAMES B. REYNOLDS,
(17046.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27925.)

Drawback on sugar sirup.

Drawback on sugar sirup manufactured by Arbuckle Brothers, of Brooklyn, N. Y., from imported and domestic raw sugars.—T. D. 23570 of March 6, 1902, extended.

TREASURY DEPARTMENT, *February 15, 1907.*

SIR: The Department's regulations of March 6, 1902 (T. D. 23570), establishing a rate for the allowance of drawback on the exportation of sirup manufactured by the American Sugar Refining Company of New Orleans, La., from a mixture of imported and domestic raw sugars, are hereby extended, so far as applicable, to cover sirup manufactured by Arbuckle Brothers, of Brooklyn, N. Y., from similar materials in accordance with their sworn statement, dated February 1, 1907, which is inclosed herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(4365 *k.*) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27926.)

Drawback on liquid tanning extract.

Drawback on liquid tanning extract B. B. manufactured by the Bulls Ferry Chemical Company, of Shady Side, N. J., for and on account of A. Klipstein & Co., of New York City, with the use of imported solid extract of quebracho.

TREASURY DEPARTMENT, *February 15, 1907.*

SIR: On the exportation of liquid tanning extract B. B. manufactured by the Bulls Ferry Chemical Company, of Shady Side, N. J., for and on account of A. Klipstein & Co., of New York City, with the use of imported solid extract of quebracho, a drawback will be allowed equal in amount to the duty paid on the imported quebracho used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the contents of each package separately and in the aggregate. Each package must be marked with the gross, tare, and net weights thereof.

The drawback entry must show the total quantity of liquid tanning extract B. B. exported, the quantity of imported solid quebracho

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consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 24, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of quebracho which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry after official verification of the exported quantities, provided it shall in no case exceed 50 per cent of the net weight of the exported liquid tanning extract.

Respectfully, JAMES B. REYNOLDS,
(43132.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27927.)

Drawback on dry white lead.

Drawback on dry white lead manufactured by the United Lead Company, of New York City, wholly with the use of imported pig lead.

TREASURY DEPARTMENT, *February 16, 1907.*

SIR: On the exportation of dry white lead manufactured by the United Lead Company, of New York City, wholly with the use of imported pig lead, a drawback will be allowed equal in amount to the duty paid on the pig lead so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight of each package and the entire shipment. Each package must be marked with the gross, tare, and net weight thereof.

The drawback entry must show the total quantity of dry white lead exported, the percentage and quantity of imported lead contained therein, the value of the pig lead used, together with the quantity and current value of the dross wastage incurred in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured in the manner and of the materials set forth in the manufacturers' sworn statement, dated December 27, 1906, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig metallic lead which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, with an allowance for valuable waste in proportion to the value of such waste at the time of manufacture and the price paid at the works for the imported pig lead, provided that the percentage of the metallic lead contained therein shall not be less nor the percentage of dross loss greater than that shown in the manufacturers' sworn statement, or as found by the appraiser upon analysis of the dry white lead.

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Sworn samples may be taken or sworn samples furnished as ordered by the collector for required determinations.

Respectfully, JAMES B. REYNOLDS,
(43529.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27928.)

Dyers' sticks.

Decision of the United States circuit court for the southern district of New York in suits 4249 and 4250 of United States *v.* Knipscher & Maas Silk Dyeing Company (T. D. 27855), involving dutiable classification of dyers' sticks, acquiesced in.

TREASURY DEPARTMENT, *February 16, 1907.*

SIR: The Department is in receipt of reports of the United States attorney for the southern district of New York in which he states that suits 4249 and 4250 of United States *v.* Knipscher & Maas Silk Dyeing Company (T. D. 27855) were recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of certain so-called "dyers' sticks," which were assessed for duty at the rate of 35 per cent ad valorem as manufactures of wood under paragraph 208. The importers protested, claiming the sticks to be bamboo sticks cut to length, and as such entitled to free entry under paragraph 700 of the free list of the act of July 24, 1897, which claim was sustained by the United States circuit court in these cases.

The Attorney-General advises the Department that no further proceedings will be directed in these cases. You are therefore hereby authorized to forward the usual certified statements for refund of the duties exacted in excess of settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(30732.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27929.)

Zinc ores—Calamine.

Appeal directed from G. A. 6540 (T. D. 27891) of February 5, 1907, involving the dutiable classifications of zinc ores.

TREASURY DEPARTMENT, *February 16, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, G. A. 6540 (T. D. 27891), of Febru-

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ary 5, 1907, wherein it is held that the term "calamine" under paragraph 514 of the tariff act of 1897 includes both the carbonate and the silicate of zinc, and that "blende" or sulphide of zinc, not being a "metallic substance" as that term is employed in paragraph 183, is free of duty under paragraph 614 of the said act as a mineral substance.

In view of the importance of the issue, you are hereby directed to file an application for a review of the said decision of the Board of United States General Appraisers in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(23706.) *Acting Secretary.*
SURVEYOR OF CUSTOMS, *Kansas City, Mo.*

(T. D. 27930.)

Automobile repairs.

Appeal directed from decision of Board of United States General Appraisers, Abstract 14263 (T. D. 27892), involving the classification of a certain automobile repaired abroad.

TREASURY DEPARTMENT, *February 16, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers of January 30, 1907, Abstract 14263 (T. D. 27892), involving the classification of a certain automobile which had been repaired abroad by the addition of a new body.

The importers contend that this automobile was entitled to admission free of duty under paragraph 504 of the tariff act of July 24, 1897, as a household effect, and the Board held, on the authority of Hillhouse *v.* United States, January 8, 1907 (T. D. 27831), that so much of the machine as was a new manufacture was dutiable, and that the rest was free of duty.

The Department has addressed a letter of even date to the Attorney-General recommending that a writ of certiorari be applied for in the Hillhouse case decided by the Board, and in view of this you are directed to file an application for a review of the decision of the Board of United States General Appraisers, in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(31531.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27931.)

Common carrier.

Approving bond of The Robinson, Baxter, Dissosway Towing and Transportation Company for the transportation of unappraised merchandise from New York, under the act of June 10, 1880.

TREASURY DEPARTMENT, *February 18, 1907.*

SIR: The bond, in duplicate, of The Robinson, Baxter, Dissosway Towing and Transportation Company, transmitted with your letter of the 14th instant, for the transportation of unappraised merchandise under the act of June 10, 1880, and amendments thereto, was approved on the 16th idem, and one copy of the bond is inclosed herewith for the files of your office.

The company named is authorized, under said bond, to transport unappraised merchandise from the port of New York to the ports of Newark, N. J., Albany, N. Y., Bridgeport, New Haven, Hartford, and Middletown, Conn., Newport and Providence, R. I., and New Bedford and Fall River, Mass., in suitable vessels owned or controlled by the said company and running over such water routes as may be necessary to reach the port of destination named in the entry and manifest in each case.

Respectfully, JAMES B. REYNOLDS,
(16653.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27932.)

Importation and inspection of tea under the act approved March 2, 1897.

[Circular No. 12.]

TREASURY DEPARTMENT, *February 19, 1907.*

To officers of the customs and others concerned:

Upon the recommendation of the board of tea experts the following are hereby fixed and established under the act of March 2, 1897, as the tea standards for the year 1907:

No. 1. Formosa Oolong.
No. 2. Foochow Oolong.
No. 3. Congou.
No. 4. Ceylon (used for India).
No. 5. Ping Suey, green.
No. 6. Country green.
No. 7. Japan pan fired (used for sun dried).
No. 8. Japan basket fired.
No. 9. Japan dust or fannings.
No. 10. Capers (used for scented Orange Pekoe).
No. 11. Canton Oolong.
No. 12. Scented Canton.

The other regulations in T. D. 27124 of February 15, 1906, continue unchanged.

LESLIE M. SHAW, *Secretary.*

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(T. D. 27933—G. A. 6545.)

Dutiable weight—Entry and withdrawal.

1. TOBACCO WITHDRAWN FROM WAREHOUSE.

Under section 33, tariff act of 1897, warehoused merchandise dutiable by weight should be assessed according to its weight at the time of entry and not at time of withdrawal from warehouse.

2. SAME—DISTINCTION BETWEEN RATE AND WEIGHT.

Section 20, customs administrative act of 1890, as amended by the act of December 15, 1902 (T. D. 24109), wherein it is provided as to merchandise withdrawn from bonded warehouse that "the same rate of duty shall be imposed thereon as may be imposed by law upon like articles imported at the time of withdrawal," refers to rate of duty rather than to the weight of the merchandise.

3. CONSTRUCTION OF PROVISO.

Section 33, tariff act of 1897, relating to "merchandise previously imported for which no entry has been made," or "previously entered without payment of duty," contains a proviso that the duties on warehoused goods dutiable by weight shall be based upon the weight of such goods at the time of entry. *Held* that the proviso is not restricted to the matter immediately preceding it, relating to goods imported prior to the passage of the act, but was intended to be general, and includes as well merchandise imported after the passage of the act.

United States General Appraisers, New York, February 14, 1907.

In the matter of protests 229609, etc., of G. Falk & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* Each of the importations covered by these protests and embraced in the schedule consists of tobacco, all of which was imported under the tariff act of 1897. No objection is taken to the classification of the goods by the collector. The goods were placed in bonded warehouse and duty was assessed upon the merchandise on the basis of its weight at the *time of entry*, such tobacco being dutiable according to weight. The importers claim that this duty should have been assessed upon the weight of the tobacco at the time of its *withdrawal* from bonded warehouse, and not at the time of entry.

This question was considered by the Board originally in the case of Schmid & Co., G. A. 4214 (T. D. 19715), decided July 14, 1898. This decision was a construction of section 33 of the tariff act of 1897, and of section 50 of the tariff act of 1890. The following proviso was attached to said section 50:

Provided further, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its *withdrawal.*

Section 33 of the tariff act of 1897 contains the following proviso:

Provided, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its *entry.*

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It was observed by the Board as follows:

It is perfectly clear that an irreconcilable repugnancy exists between the provisions of section 50 of the tariff act of 1890 and those of section 33 of the act of 1897, and, therefore, the former section is necessarily repealed by the latter.

After citing the proviso above set out, the Board further observed:

It requires no argument to demonstrate that the latter proviso (sec. 33) repeals the former (sec. 50), a conclusion which is rendered more emphatic by the provisions of section 34 of the tariff act of 1897.

At a later date the same question arose in the cases of the American Cigar Company and of Falk & Bro., G. A. 5695 (T. D. 25353), where the following propositions were settled:

1. Under the tariff act of 1897, goods withdrawn from bond are dutiable on the basis of their weight at the time of entry, and not at the time of withdrawal; and this rule has not been changed by the act of December 15, 1902, amending section 20 of the act of June 10, 1890 (13 Stat., pt. 1, p. 753).

2. A protest can not properly be filed before the cause of action of the importer arises; and a protest claiming that goods in a bonded warehouse are dutiable according to their weight on withdrawal is premature if filed before withdrawal. It should properly be filed within ten days after such time of withdrawal.

Said section 20 of the customs administrative act of June 10, 1890 (26 Stat., 131), had been amended so as to read as follows:

That any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That the *same rate of duty* shall be collected thereon as may be imposed by law upon like articles of merchandise imported at the time of the withdrawal: *And provided further*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

An appeal from these decisions as made by the Board was taken to the circuit court for the southern district of New York. The opinion of Judge Platt will be found reported in 145 Federal Reporter, 574, and by the Department in T. D. 25976, and entitled Falk *v.* United States and American Cigar Company *v.* United States. The decision of the Board in each of these cases was affirmed by the circuit court. A further appeal was taken by the importers from those decisions to the circuit court of appeals, second circuit, in American Cigar Company *v.* United States and Falk *v.* United States (146 Fed. Rep., 484; T. D. 27036), where it was held as follows:

1. A protest filed within ten days after the original liquidation, while the merchandise is yet in warehouse, is premature and invalid.

2. That under section 20 of the customs administrative act of 1890, as amended by the act of December 15, 1902 (32 Stat., 758; T. D. 24109), the assessment of duties on merchandise withdrawn from warehouse should be based on its weight at the time of withdrawal and not at the time of entry.

The circuit court of appeals cited in support of their decision the case of Mosle *v.* Bidwell (130 Fed. Rep., 334; T. D. 25276), which decision was held by them to be conclusive of the question raised.

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No appeal was taken from the decision of the circuit court of appeals in the case of the American Cigar Company, but an appeal was prosecuted in the Falk case, which will be found reported in United States *v.* Falk (27 Sup. Ct. Rep., —), and is reported by the Treasury Department in T. D. 27832. The Supreme Court, in the opinion by Justice McKenna, reversed the decision of the circuit court of appeals and affirmed the view taken by the Board in the decisions above cited. It was held accordingly by the Supreme Court that under section 33 of the tariff act of 1897, warehoused merchandise dutiable by weight should be assessed according to its weight at the time of entry, and not at the time of withdrawal from warehouse; and, further, said section 20 of the customs administrative act of 1890, as amended by the act of December 15, 1902, wherein it is provided as to merchandise withdrawn from bonded warehouse, that the "same rate of duty shall be imposed thereon as may be imposed by law upon like articles imported at the time of withdrawal," refers to the *rate of duty* rather than the weight of the merchandise.

The court further held that the proviso of section 33 of the tariff act of 1897, relating to merchandise previously imported, for which no entry had been made, etc., is not restricted to the matter immediately preceding it, relating to goods imported prior to the passage of the act, but was intended to be general, and includes as well merchandise imported after the passage of the act.

These views sustain that taken by the Board, and reverse the decision of the circuit court of appeals on this point.

Following the decision of the Supreme Court, cited *supra*, and the various decisions of the Board heretofore cited, we hold that duty on the tobacco was properly assessed in all cases upon the weight of the merchandise at the time of entry, and overrule the protests claiming that such duty should be assessed upon the weight at the time of withdrawal. The decision of the collector is accordingly affirmed in each case.

(T. D. 27934—G. A. 6546.)

Blocks of rough granite, measurement of.

Blocks of granite, rough and irregular in shape, are subject to duty at the rate of 12 cents per cubic foot under paragraph 117, tariff act of 1897, based upon the actual cubical quantity imported.—Fritz *v.* United States (135 Fed. Rep., 916; T. D. 25878) and G. A. 6432 (T. D. 27587) cited.

United States General Appraisers, New York, February 18, 1907.

In the matter of protests 206820, etc., of J. Ruthe *et al.* against the assessment of duty by the collector of customs at the port of Port Townsend.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise involved in these protests is rough granite, consisting of 68 pieces measuring 1,500 cubic feet, entered at Port Townsend. Duty was assessed

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thereon at the rate of 12 cents per cubic foot under the provisions of paragraph 117, tariff act of 1897. It is not complained that duty was assessed at the wrong rate or under the wrong paragraph, but that such assessment was on a greater number of cubic feet than the importation actually contained.

There is nothing in the record to indicate that under the method of measurement used by the collector there was not the actual number of cubic feet in the importation on which duty was assessed, but it is claimed that the collector's method of measurement was not that which should have been adopted, for the reason that it did not harmonize with the rule followed by the importer and the seller of the stone in the country from whence imported, to determine quantity.

It appears that each stone contained in the importation is quarried to conform as nearly as may be to specific dimensions furnished by the importer, and that there is no attempt before importation to trim or cut the stones to conform to such dimensions any nearer than as they come from the quarry bed. It is therefore claimed on behalf of the importer that there is much waste in the cutting of such stone to the exact dimensions after importation. This is illustrated by the statement in evidence that if a stone 4 feet square is ordered the quarryman will lay to cut a stone 4 feet 6 inches or 4 feet 7 inches long; and this, it is claimed, is necessitated by the fact that it is impossible, with any degree of certainty, to quarry a block within 6 inches of what is to be the dressed measurement. Because of the methods used in drilling, plugging, and wedging to get the blocks out they come in irregular shapes, the ends sometimes running to a point. It appears that for such excess of measurement over what the stone will show in the dressed state no charge is made upon the importer by the quarryman; and for this reason it is contended that duty should not have been assessed on any such excess of measurement.

Even though it were to be held that such claim is well founded, it would be impossible for us to make a decision which could be made the basis of a reliquidation for the relief of protestant, as there is nothing in the record before us showing the excess of the collector's measurement over the dressed measurement. But we do not incline to the opinion that, however definitely the alleged excess might have been detailed, we would have been justified under the law in directing the collector to assess duty upon any other basis than the actual cubical measurement of the granite as imported.

Paragraph 117, under which duty was assessed, reads as follows:

> Freestone, granite, sandstone, limestone, and other building or monumental stone, except marble and onyx, unmanufactured or undressed, not specially provided for in this Act, twelve cents per cubic foot.

Here we have a special provision for undressed granite, and we think that no other view is justified than that Congress intended that

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undressed granite should be measured for duty purposes as it is imported. There being no special rule either in the tariff act or in the Treasury regulations for the ascertainment of the cubical quantity, we can see no other course open to the collector than to follow the usual rules of measurement to ascertain the same.

The mere fact that there may have been included in the collector's measurement portions of the stones which in the process of dressing become waste would not justify him in disregarding what seems to be the plain requirement of the law.

In Fritz *v.* United States (135 Fed. Rep., 916; T. D. 25878) the question was whether the Government had rightly included in the square-foot measurement of rugs the selvage thereof under the provisions of paragraph 379 of said act of 1897, and the court decided adversely to the importers. In his opinion, Judge Platt said:

> It is not believed that the testimony bearing upon the custom of the trade in this regard affects the plain meaning of the language of paragraph 379. The only remedy for the importers' troubles is to take care that as little as possible of what they term useless and extra length shall be present in the imported article.

In G. A. 6432 (T. D. 27587) the Board passed upon substantially the same question adversely to the protestant. It was then held that the practice for many years at the port of New York had been to apply the rules laid down in the customs regulations for the measurement of marble to the measurement of granite.

The protests are overruled and the decision of the collector affirmed.

(T. D. 27935—G. A. 6547.)

Post cards—Manufactures of silk and paper.

So-called private post cards made by pasting together two or more layers of paper held to be dutiable as manufactures of paper under the provisions of paragraph 407, tariff act of 1897. Similar cards with silk or silk-plush backs held dutiable as manufactures of silk under paragraph 391 of said act.—Stratton *v.* Olcovich (T. D. 26339), Meffert *v.* United States (suit 4131; T. D. 27430), and United States *v.* Hensel (T. D. 27856) cited and followed.

United States General Appraisers, New York, February 19, 1907.

In the matter of protests 221725, etc., of Paul Schmidt & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of so-called private post cards upon the reverse side of which have been pasted pieces of silk, silk plush, or paper, as the case may be, cut to the size of the card, with raised floral effects thereon, produced in some cases by embossing and in others by affixing the leaves, buds, etc., in the manner of appliquéing. Duty was assessed on the silk and paper cards at the rate of 50 per cent ad valorem under the provisions of paragraph 391, tariff act of 1897, as manufactures of silk,

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and on the others at the rate of 35 per cent under paragraph 407 as manufactures of paper. The claim of the importers is that the goods are dutiable properly as printed matter at 25 per cent under paragraph 403.

We are of opinion that this claim can not be maintained. These articles are somewhat elaborate creations, utterly useless for the purpose of transmitting a message, and substantially the only printed matter thereon is the inscription "Post card" on the face of the card in various languages. The goods are more than post cards. There is no specific provision for post cards in the tariff and the small quantity of printed matter on the articles is too insignificant to govern their classification. On this point the recently decided case of United States *v.* Hensel (T. D. 27856) is an authority. It was there held that lace paper tops and doilies having the names and addresses of merchants printed thereon were dutiable as manufactures of paper and not as printed matter, although the actual quantity of printing on them much exceeded that on the goods now before us. Another case particularly applicable to the portion of the importation consisting of cards made by pasting two or more layers of paper together is Stratton *v.* Olcovich (T. D. 26339), wherein it was held that strawboard made by pasting two or more layers of paper together is properly classifiable as manufactures of paper. Finally, in a decision dated September 19, 1905, Abstract 8194 (T. D. 26735), the Board held certain post cards made of two layers of paper, with a thin sheet of rubber laid beween them, to be dutiable as manufactures of paper. On appeal this decision was affirmed by consent. (T. D. 27430; suit 4131.)

On the authorities cited we hold that the assessment of duty complained of is correct. The protests are overruled and the decision of the collector affirmed in each case.

(T. D. 27936—G. A. 6548.)

Splash mats not paintings.

Splash mats made of strips of wood and joined together with cords or threads, on which so-called pictures have been produced by stenciling, *Held* dutiable as manufactures of wood under the provisions of paragraph 208, tariff act of 1897.—Abstract 8593 (T. D. 26802) and decision of United States circuit court in Woolworth *v.* United States (T. D. 27853) followed.

United States General Appraisers, New York, February 19, 1907.

In the matter of protests 183650, etc., of A. Leipzig *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The articles in question are splash mats, composed of wooden strips joined together with cords or

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threads, on which pictures or figures have been produced by stenciling. Duty was assessed on the same at the rate of 35 per cent ad valorem under the provisions of paragraph 208, tariff act of 1897, as manufactures of wood. Protestants claim that duty should have been assessed at the rate of 20 per cent ad valorem, either under section 6 or the provisions of paragraph 454 of said act, or at other rates lower than that assessed.

A question similar to that presented here was considered and determined by the Board adversely to the contentions of the importers in Abstract 8593 (T. D. 26802). An appeal was taken from that decision by the protestants to the United States circuit court for the southern district of New York in Woolworth *v.* United States (suit 4140), and the court affirmed the decision of the Board, holding that that duty had been correctly assessed by the collector (T. D. 27853).

On the authority of the court ruling above cited, these protests are overruled and the decision of the collector is affirmed in each case.

(T. D. 27937.)

Abstracts of decisions of the Board of General Appraisers.

No. 14430.—Leaf Tobacco.—Protest 226636 of F. Miranda & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 11, 1907. Opinion by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the various bales to contain the following percentages of filler tobacco and modified the collector's classification accordingly: Bales 8482 and 8483, 100 per cent; bale 8401, 94 per cent.

No. 14431.—Tobacco—Product of Two or More Countries.—Protest 217063 of C. Erdt against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 11, 1907. Opinion by Lunt, G. A.

The protest related to tobacco, which the Board held to have been properly subjected to the provisions of paragraph 218, tariff act of 1897, for tobacco which is the product of two or more countries.

No. 14432.—Tamarind Seed—Drug.—Protest 201408 of Fook Sang Tong Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 11, 1907. Opinion by Lunt, G. A.

As claimed by the importers, the Board held tamarind seed free of duty under the provision in paragraph 548, tariff act of 1897, for crude drugs.

No. 14433.—Lamp Reflectors.—Protest 183708 of Leo Popper & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 11, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6501 (T. D. 27783), relating to lamp reflectors.

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No. 14434.—Steel Points for Belts.—Protest 219249 of Baum, Luiz & Cohen against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

The Board held steel points for belts to have been properly classified as manufactures of metal under paragraph 193, tariff act of 1897.

No. 14435.—Post Cards.—Protests 195264, etc., of Raphael Tuck & Sons Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

G. A. 6369 (T. D. 27359) followed, relating to post cards.

No. 14436.—Toy Lanterns.—Protest 223434 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 5189 (T. D. 23910), relating to toy lanterns.

No. 14437.—Calamine—Carbonate of Zinc.—Protest 200236 of New Jersey Zinc Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

The merchandise, consisting of zinc ore in which carbonate of zinc predominated, was classified under paragraph 183, tariff act of 1897, as a metallic mineral substance in a crude state, and was claimed to be free of duty as calamine under paragraph 514. Protest sustained on the authority of G. A. 6540 (T. D. 27891).

No. 14438.—Calamine—Sulphide of Zinc—Silico—Carbonate of Zinc.—Protests 180704, etc., of C. G. Brewster against the assessment of duty by the collector of customs at the port of Laredo. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of G. A. 6540 (T. D. 27891), the merchandise being held free of duty—sulphide of zinc under paragraph 614, tariff act of 1897, as a crude mineral, and carbonate and silicate of zinc under paragraph 514 as calamine, with the lead contents of these minerals subject to the duty provided in paragraph 181.

No. 14439.—Calamine—Carbonate of Zinc.—Protest 189922 of C. G. Brewster against the assessment of duty by the collector of customs at the port of Laredo. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

The protest related to carbonate of zinc, classified free of duty as calamine under paragraph 514, tariff act of 1897, but with a duty on the lead contents as prescribed in paragraph 181. The collector found the quantity of lead to be 9 per cent. The Board found it should have been but 7.1 per cent, as claimed in the protest.

No. 14440.—Featherstitch Braids.—Protests 42650*f*, etc., of H. Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

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No. 14441.—EMBROIDERY COTTON.—Protests 97792*f*, etc., of Brunner & Dreifuss *et al.*, protest 200713 of Eugene Keller, and protests 94063*f*, etc., of Schweizer & Traber *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinions by De Vries, G. A.

Protests sustained on the authority of G. A. 6544 (T. D. 27915), relating to embroidery cotton.

No. 14442.—HEMP FIBERS.—Protests 190104, etc., of Dieckerhoff, Raffloer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907.

The protests related to hemp fibers knotted together and wound on spools. The importers contended that the goods had been improperly classified as manufactures of hemp under paragraph 347, tariff act of 1897, and should have been passed free of duty under paragraph 566. Protests overruled.

DE VRIES, *General Appraiser:* * * * The cases were submitted on the official sample, no evidence having been offered. In Abstract 10507 (T. D. 27223) merchandise the same in all respects as this was under consideration; and the Board there held, in the absence of testimony, that it was not a yarn. Now the further contention is made that it is free of duty under paragraph 566 as "fibrous vegetable substances, not dressed or manufactured in any manner, and not specially provided for in this Act." In G. A. 6018 (T. D. 26288) the Board passed upon a similar question, the merchandise being Dewghuddy hemp, and in that decision said:

> The first word in paragraph 327, to wit, "hemp," is broad enough and does include all classes of hemp, and that provision has no exceptions to it by virtue of a general proviso such as that appended to paragraph 566.

It follows, therefore, that hemp, even when unmanufactured, is excluded from paragraph 566.

No. 14443.—BRAIDS.—Protests 3292*h*, etc., of Simpson, Crawford & Simpson against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6364 (T. D. 27343), relating to braids.

No. 14444.—FUNGUS.—Protest 168532 of Wo On & Co. against the assessment of duty by the collector of customs at the port New York. Before Board 8 (Waite, Somerville, and Hay, General Appraisers), February 11, 1907.

The merchandise related to Chinese edible fungus, which the importers contended had been improperly classified under paragraph 241, tariff act of 1897, relating to prepared vegetables.

WAITE, *General Appraiser:* * * * All the claims, with the exception of that under paragraph 257, are overruled upon the authority of Board decision *In re* Kwong Tai Chong *et al.*, G. A. 6184 (T. D. 26812), affirmed by consent in the circuit court for the southern district of New York (T. D. 27666; suit 4144). With respect to the claim under paragraph 257 it may be noted that the appraiser reports that the variety of fungus described as No. 1 is a prepared article put up in 1-pound boxes, while that described as No. 2 is not prepared in any way other than by drying. It follows that, under the decision cited, No. 2 is properly assessable as a vegetable in its natural state under said paragraph 257, while, for anything the record shows, No. 1 was properly taxed.

The protest is sustained as to the claim that the fungus described as No. 2 is dutiable at 25 per cent ad valorem under paragraph 257 and overruled upon all other grounds.

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No. 14445.—SHORTAGE.—Protests 220974, etc., of Havana-American Company *et al.* against the assessment of duty by the collector of customs at the port of Tampa. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 11, 1907. Opinion by Somerville, G. A.

The Board sustained the importers' contention that there was a shortage of 3 bales of tobacco, on which no duty should have been assessed.

No. 14446.—ADDITIONAL DUTY—CONSIGNED GOODS.—Protest 218156 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 11, 1907. Opinion by Somerville, G. A.

The collector refused to allow the importers to make an addition on entry, on the theory that the goods were consigned and not purchased. The importers' objection to this procedure was sustained on the authority of G. A. 6326 (T. D. 27243).

No. 14447.—PROTESTS ABANDONED.—Protests 220522, etc., of J. W. Hampton, Jr., & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

No. 14448.—PROTEST ABANDONED.—Protest 213030 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14447 (*supra*).

No. 14449.—PROTEST UNSUPPORTED.—Protest 223952 of American Express Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 11, 1907. Opinion by Fischer, G. A.

Protest overruled for want of merit.

No. 14450.—PROTEST UNSUPPORTED.—Protest 226412 of Dame, Stoddard & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14449 (*supra*).

No. 14451. — PROTEST UNSUPPORTED. — Protest 223112 of John V. A. Cattus. Opinion by Howell, G. A.

Same as No. 14449 (*supra*).

No. 14452.—PROTEST UNSUPPORTED. — Protest 221886 of Goldschmidt & Co. against the assessment of duty by the collector of customs at the port of Eagle Pass. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 11, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 14453.—BRAIDS.—Protest 205936 of Zadek Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

The goods were held to have been properly classified as braids under G. A. 6491 (T. D. 27761), relating to braids.

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No. 14454.—WHISTLES—TOYS.—Protest 218187 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

The protest related to goods classified as manufactures of metal under paragraph 193, tariff act of 1897, and claimed to be dutiable as toys under paragraph 418. Part of the goods were found to consist of tin whistles provided with a piston, and as to these the protest was sustained. The remainder, consisting of a metal whistle similar to those passed on in G. A. 2406 (T. D. 14684), were held to have been properly classified.

No. 14455.—AUTOMOBILES—ENTIRETIES.—Protests 223962, etc., of Massenat Deroche *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

The importations in controversy consisted of complete automobiles, each accompanied with a full set of rubber tires separately itemized on the invoice. The importers contended that the collector erred in treating the articles as entireties and classifying them as manufactures of metal under paragraph 193, tariff act of 1897, and that the tires should have been separately assessed as manufactures of rubber. Protests overruled on the authority of G. A. 6489 (T. D. 27759) and G. A. 6490 (T. D. 27760).

No. 14456.—IMITATION HORSEHAIR.—Protest 224536 of J. H. Lichtenstein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6387 (T. D. 27442), relating to imitation horsehair.

No. 14457.—TROUT FLIES.—Protest 198368 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

The goods consisted of trout flies, classified as composed in chief value of metal. One item was held dutiable as manufactures of rubber under paragraph 449, tariff act of 1897, as claimed by the importers.

No. 14458.—FISHHOOKS.—Protest 202196 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Fischer, G. A.

Protest sustained as to a portion of the goods on the authority of G. A. 6494 (T. D. 27764), relating to fishhooks.

No. 14459.—COTTON TAPES.—Protests 81071*f*, etc., of Samstag & Hilder Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinion by Howell, G. A.

Protests sustained as to a portion of the goods on the authority of G. A. 6278 (T. D. 27060).

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No. 14460.—UNTRIMMED HATS.—Protest 202368 and protest 219653 of R. L Cochran Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 13, 1907. Opinions by Howell, G. A.

A portion of the goods was held dutiable as untrimmed hats under paragraph 409, tariff act of 1897, as claimed by the importers.

No. 14461.—EMBROIDERY COTTON.—Protests 96768 *f*, etc., of Hermann Aukam & Co. *et al.* and protests 3776 *h*, etc., of Moeller & Littauer *et al.* February 13, 1907.

Same as No. 14441 (*supra*).

No. 14462.—PROTESTS ABANDONED.—Protests 42201 *b*, etc., of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. February 13, 1907.

Same as No. 14447 (*supra*).

No. 14463.—PROTESTS UNSUPPORTED.—Protests 218305, etc., of Baum, Luiz & Cohen and protest 223352 of Knauth, Nachod & Kühne. February 13, 1907.

Same as No. 14449 (*supra*).

No. 14464.—PROTESTS UNSUPPORTED.—Protest 218215 of Harold Godwin and protest 218919 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. February 13, 1907. Opinions by Hay, G. A.

Same as No. 14452 (*supra*).

No. 14465.—PINS.—Protest 137 *h* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of pins, was held dutiable as manufactures of the component material of chief value, as claimed by the importer. G. A. 6376 (T. D. 27390) followed.

No. 14466.—PINS—ORNAMENTS.—Protests 57864 *b*, etc., of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by Sharretts, G. A.

The protests related to pins, ornaments, etc. The contentions therein made were disposed of on the authority of the following cases: G. A. 6130 (T. D. 26653). G. A. 6376 (T. D. 27390), and Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316).

No. 14467.—ORNAMENTS—PINS.—Protests 86870 *f*, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by Sharretts, G. A.

The protests related to pins, ornaments, etc., a portion of which was held to have been improperly classified as jewelry and to be dutiable as manufactures of the component materials of chief value.

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No. 14468.—Decorated Glassware—Jewel Cases—Fruit Stands.—Protest 224317-23368 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907.

The goods were held to have been properly classified under paragraph 100, tariff act of 1897, relating to decorated glassware, etc.

Sharretts, *General Appraiser:* The merchandise in question consists of—

1. Jewel cases with heavy beveled plate-glass tops and molded bases with ground grooves in which brass trimmings are fitted. The interior of the box contains a cushion upon which jewelry is to rest. Cut glass is the component material of chief value.

2. Fruit stands composed of colored glass tops and simple, inexpensive tripod bases, composed of soft metal painted in imitation of bronze. The glass dish is relatively elaborate and is of more value than the metal base, in which respect they differ from the articles the subject of decision in Abstract 18474 (T. D. 27719), which articles had elaborate statuary bases of more value than the glass dishes attached thereto.

No. 14469.—Alizarin Assistant.—Protests 205676, etc., of A. Klipstein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by McClelland, G. A.

The merchandise was held to have been properly classified under the provision in paragraph 32, tariff act of 1897, for alizarin assistant containing more than 50 per cent of castor oil.

No. 14470.—Schmaschen Gloves.—Protest 223005 of Max Mayer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by McClelland, G. A.

A portion of the goods was held dutiable as schmaschen gloves, as claimed by the importers.

No. 14471.—Bone Needles.—Protest 221660-23025 of T. Buettner & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by McClelland, G. A.

The protest related to so-called mesh pins and knitting needles, classified as manufactures of bone under paragraph 449, tariff act of 1897, and claimed to be dutiable under the provision in paragraph 165 for needles not specially provided for. Protest sustained as to the knitting needles.

No. 14472.—Willow Squares.—Protest 221878-23364 of Gage Brothers & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by McClelland, G. A.

The merchandise, which was classified as manufactures in chief value of willow under paragraph 206, tariff act of 1897, was claimed to be dutiable under paragraph 409, relating to willow squares composed "wholly" of willow. It appearing that the goods were composed in part of cotton, the protest was overruled.

No. 14473.—Molders' Patterns.—Protest 225506 of Algoma Steel Company against the assessment of duty by the collector of customs at the port of Marquette. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 14, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

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No. 14474.—WATERING POTS—TOYS.—Protests 180509, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 14, 1907. Opinion by Fischer, G. A.

The merchandise consisted of watering pots with long spouts, such as are ordinarily used in flower gardens. The Board overruled the importers' contention that they should have been classified as toys under paragraph 418, tariff act of 1897.

No. 14475.—POST CARDS.—Protests 221715-22926, etc., of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 14, 1907. Opinion by Fischer, G. A.

G. A. 6369 (T. D. 27359) followed, relating to post cards.

No. 14476.—PROTEST FILED TOO LATE.—Protest 222704 of Taylor Brothers Company against the assessment of duty by the collector of customs at the port of Rochester. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 14, 1907. Opinion by Fischer, G. A.

The protest was overruled because not filed within the time prescribed by law.

No. 14477.—ARTICLES IN PART OF LACE.—Protest 221653-22987 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 14, 1907.

The merchandise was classified under the provision in paragraph 339, tariff act of 1897, for articles in part of lace, and was claimed to be dutiable under paragraph 407 or 403 relating, respectively, to manufactures of paper and printed matter. Protest overruled.

HOWELL, *General Appraiser:* * * * From an examination of official samples we find that the goods consist of fancy articles probably intended to be used as valentines. They are made with a card-board foundation covered with silk or silk velvet, which has been plaited, shirred, or otherwise manipulated to give it a cushioned effect, in the center of which is placed a miniature wax figure of a child, which is surrounded by a paper wreath in imitation of flowers. The articles are trimmed with two rows of cotton lace, one running over a portion of the velvet or silk and the other forming an outside border. Some of the articles have other minor ornamentations composed of paper or tinsel. On the back of the articles there is pasted a paper envelope in which is inclosed a sheet of folded paper with printed matter in the form of a letter, from which, no doubt, the articles derive their invoice description—"Patenbriefe."

As the articles are made in part of cotton lace, they appear to be properly dutiable at 60 per cent ad valorem under the provision in paragraph 339 of said act for "articles made wholly or in part of lace * * * composed wholly or in chief value of flax, cotton, or other vegetable fiber."

No. 14478.—PROTESTS ABANDONED.—Protests 220520, etc., of Guthman, Solomons & Co. *et al.* February 14, 1907.

Same as No. 14447 (*supra*).

No. 14479.—PROTEST ABANDONED.—Protest 221922-23300 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago. February 14, 1907.

Same as No. 14447 (*supra*).

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No. 14480.—PROTESTS UNSUPPORTED.—Protests 221671–23235, etc., of G. W. Sheldon & Co. and protest 224806–23033 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 14, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14481.—PROTEST UNSUPPORTED.—Protest 209202 of New Orleans Terminal Company against the assessment of duty by the collector of customs at the port of New Orleans.

Same as No. 14480 (*supra*).

No. 14482.—PROTEST UNSUPPORTED.—Protest 221703–23323 of Marshall Field & Co. Opinion by De Vries, G. A.

Same as No. 14480 (*supra*).

No. 14483.—PROTEST UNSUPPORTED.—Protest 188593 of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York. Opinion by De Vries, G. A.

Same as No. 14480 (*supra*).

No. 14484.—PROTESTS UNSUPPORTED.—Protests 175271–20291, etc., of G. W. Sheldon & Co. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by Sharretts, G. A.

Same as No. 14480 (*supra*).

No. 14485.—DECORATED CHINA VASES.—Protest 179965 of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by Sharretts, G. A.

The protest related to bronze-mounted china vases, which were held to have been properly classified under the provision in paragraph 96, tariff act of 1897, for decorated china. G. A. 6530 (T. D. 27870) followed.

No. 14486.—MANUFACTURES OF METAL—MASKS—CUT GLASS.—Protest 151566 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by Sharretts, G. A.

The Board sustained the importers' contention that ink wells composed of cut glass and metal, metal the material of chief value, and chain purses similar to those covered by Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316), were dutiable as manufactures of metal under paragraph 193, tariff act of 1897. The other goods were held to have been properly classified, the baskets as manufactures in chief value of willow under paragraph 206, the masks as manufactures of cotton under paragraph 322, and smokers' and liqueur sets as articles of cut glass under paragraph 100.

No. 14487.—PINS.—Protest 158529 of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6376 (T. D. 27390), relating to pins.

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No. 14488.—MEDALLIONS—JEWELRY.—Protest 224887-23357 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by Sharretts, G. A.

A portion of the goods, which consisted of medallions having small inexpensive metal rims containing religious pictures, was held dutiable as manufactures of the component material of chief value, as claimed by the importers. The protest was overruled as to the other articles.

No. 14489.—OLIVE OIL.—Protest 214644 of G. Ponticelli against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by McClelland, G. A.

The merchandise was held free of duty as olive oil fit only for manufacturing or mechanical purposes under paragraph 626, tariff act of 1897.

No. 14490.—WORK OF ART—CARVED SCREEN.—Protest 219747 of S. B. Pomeroy against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by McClelland, G. A.

The protest related to a three-panel screen with branches, leaves, and flowers carved thereon, produced by Sanford B. Pomeroy, an American artist residing temporarily abroad. The importer contended that it should have been classified free of duty under paragraph 703, tariff act of 1897, relating to works of art produced by American artists residing temporarily abroad. The evidence showed that prior to exportation the screen was submitted to a jury composed of artists whose duty it is to examine and pass judgment upon all articles intended for exhibition in the Paris Salon as works of art, and that the jury accepted the screen as a work of art, and subsequently it was exhibited in the Salon. Protest sustained.

No. 14491.—CALAMINE—SILICO-CARBONATE OF ZINC.—Protest 199122 of Edgar Zinc Company against the assessment of duty by the collector of customs at the port of Eagle Pass. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 15, 1907. Opinion by Fischer, G. A.

G. A. 6540 (T. D. 27891) followed, relating to silico-carbonate of zinc.

No. 14492.—SILK WEARING APPAREL—UNFINISHED SCARFS.—Protest 223856 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 15, 1907.

The protest related to goods invoiced as unfinished silk scarfs, which were classified as silk wearing apparel under paragraph 390, tariff act of 1897. Assessment affirmed.

HOWELL, *General Appraiser:* * * * The protestants claim that inasmuch as the goods are "intended for the manufacture of silk scarfs * * * and not suitable for use as scarfs until finished," they are properly dutiable at 50 per cent ad valorem as manufactures of silk under the provisions of paragraph 391 of said act.

The protest has been submitted for our decision on an official sample, from an examination of which we find that the goods consist of silk scarfs finished and ready for use with the possible exception that the ends may have to be stitched or hemmed to prevent them from fraying. We hold that they are properly dutiable at the rate of 60 per cent ad valorem under the provision in paragraph 390 of said act for "articles of wearing apparel of every description, * * * made up or manufactured in whole or *in part* by the tailor, seamstress or manufacturer." Note G. A. 6116 (T. D. 26613).

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No. 14493.—PAINTINGS ON PORCELAIN.—Protest 211876 of John Dunn, Jr., against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 15, 1907.

The goods, which were described as paintings on porcelain slabs or tiles, were classified under the provision in paragraph 95, tariff act of 1897, for painted porcelain plaques, and were claimed to be dutiable under paragraph 454 relating to paintings in oil or water colors. Assessment affirmed.

WAITE, *General Appraiser:* * * * There is a sample before the Board upon which the importers rested their case at the hearing. This sample is hardly evidence, since it has not been verified or identified as coming from the importation. If it should be accepted for the purpose of showing the character of the article in controversy it would not aid the importer's contention.

The sample is made up of 12 earthenware tiles, over the face of which a landscape is painted in greens, blues, and browns, apparently mineral colors, which have been fused by the action of heat. It requires the assemblage of these tiles to form the complete picture, and they are fastened together upon a wooden frame about 1½ by 2 feet square, the picture as a whole being surrounded by an ornamental frame after the manner of oil paintings. These ornamental frames were separately assessed as manufactures of wood under paragraph 208. United States *v.* Hensel (98 Fed. Rep., 418).

It has been held by the Board that paintings done in mineral or vitrifiable colors are not paintings "in oil or water colors" within the meaning of paragraph 454. *In re* Bour, G. A. 3211 (T. D. 16422), affirmed in Bour *v.* United States (91 Fed. Rep., 533). Abstract 11980 (T. D. 27458). This fact would render the importer's claim untenable, even if the sample is more properly designated a "painting" than a "painted plaque" or "painted earthenware" within paragraph 95 or "hand-painted tiles" within paragraph 88. Note in this connection United States *v.* Richard (99 Fed. Rep., 268); Altman *v.* United States (71 Fed. Rep., 393).

No. 14494.—WORKS OF ART FOR A CHURCH.—Protest 12991 *h* of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 15, 1907. Opinion by Waite, G. A.

The protest related to stations of the Cross, which were held free of duty under paragraph 703, tariff act of 1897, as works of art imported for presentation to a church. Note G. A. 5666 (T. D. 25256).

No. 14495.—ASPARAGUS SEED.—Protest 215329 of Peek & Velsor against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 15, 1907. Opinion by Waite, G. A.

The protest related to asparagus seed, which was claimed to be free of duty under paragraph 548, tariff act of 1897, as crude drugs. Protest overruled on the authority of Abstract 12933 (T. D. 27636).

No. 14496.—CARBON BLOCKS.—Protest 221258 of Sahadi Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 15, 1907.

The importers objected to the classification of the merchandise under paragraph 97, tariff act of 1897, relating to articles of carbon not decorated. Protest overruled.

HAY, *General Appraiser:* The appraiser returned the merchandise here in question as blocks of manufactured carbon 2 by 2 by one-half inches, for use in censers. * * * Counsel for the Government claims in a memorandum that if this carbon is not dutiable directly under paragraph 97 because not susceptible of decoration, it certainly is

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by similitude. * * * Section 6 is the only provision cited in protest under which the merchandise could possibly be classed. This section is only to be resorted to when the merchandise in question can not properly be classified either directly or by similitude under some of the paragraphs of the law.

The Supreme Court held in United States *v.* Downing (201 U. S., 354; T. D. 27281) that paragraph 97 embraced only such articles of carbon as were susceptible of decoration. The merchandise is plain pieces of black carbon, and the sample is not unlike the carbon that is removed from the inside of gas retorts which has been held by this Board to be properly classified as coke under paragraph 415. Earle's case, G. A. 5513 (T. D. 24847). No claim could be successfully made that it is susceptible of decoration, nor is it in any way similar, either in material, quality, texture, or use, to an article that is susceptible of decoration. It can hardly be said that it is similar in material to an article made of carbon that is susceptible of decoration, except to use the word "material" in a sense broader than the meaning intended to be given to the word in paragraph 97. It certainly is not as similar to such an article as it is to the ordinary coke of commerce. The record before us is too meager upon which to make a more specific finding.

No. 14497.—PROTESTS ABANDONED.—Protests 226465, etc., of Berlinger, Brown & Meyer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by McClelland, G. A.

Protests abandoned; overruled.

No. 14498.—PROTESTS UNSUPPORTED.—Protests 218202, etc., of John V. A. Cattus against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 15, 1907. Opinion by Hay, G. A.

Protests overruled for want of merit.

No. 14499.—PROTEST UNSUPPORTED.—Protest 216851 of Stengel & Rothschild against the assessment of duty by the collector of customs at the port of Newark.

Same as No. 14498 (*supra*).

No. 14500.—PROTEST UNSUPPORTED.—Protest 215442 of George Nash & Co. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent). Opinion by Somerville, G. A.

Same as No. 14498 (*supra*).

No. 14501.—PROTEST UNSUPPORTED.—Protest 228519 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 15, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14502.—BEADED LEATHER BELTS.—Protest 222157 of Baum, Luiz & Cohen against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 18, 1907. Opinion by Sharretts, G. A.

Beaded belts composed in chief value of leather were held dutiable as beaded articles under paragraph 408, tariff act of 1897, rather than as manufactures in chief value of leather under paragraph 450. Protest overruled.

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No. 14503.—Imitation Pearls—Unfinished Snaps.—Protest 164342 of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 18, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6088 (T. D. 26554) and G. A. 6330 (T. D. 27255), relating to imitation pearls and unfinished snaps.

No. 14504.—Cases Containing Needles and Bodkins.—Protest 221924–23318 of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907.

The protest related to assortments of needles and bodkins in paper cases, which the collector treated as entireties, classifying them as manufactures in chief value of metal under paragraph 193, tariff act of 1897, against the importers' contention that they should have been classified free of duty under paragraph 620, relating to hand sewing needles. Protest overruled on the authority of G. A. 6220 (T. D. 26887).

Fischer, *General Appraiser:* * * * No evidence was offered by the importers, the case having been submitted for favorable decision on the record in accordance with the ruling in Abstract 13597 (T. D. 27734). The articles before us differ, however, in an essential particular from those passed on by the Board in the decision cited, for the reason that they include in the assortment bodkins, which are denominatively provided for in paragraph 165 at a duty of 25 per cent, while those that were the subject of Abstract 13597 (*supra*) contained nothing but hand-sewing needles.

No. 14505.—Canes With Ferrules—Bamboo—Paper Boxes.—Protest 221648–23036 of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinion by Fischer, G. A.

The protest related to small boxes and to bamboo walking canes with metal ferrules attached. The Board held them to have been properly classified, the former as fancy paper boxes under paragraph 405, tariff act of 1897, and the latter as walking canes under paragraph 462, the contention that the latter were free of duty as bamboo under paragraph 700 being overruled.

No. 14506.—Artificial Silk Waste.—Protests 195411, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 18, 1907. Opinion by Fischer, G. A.

Waste produced in the manufacture of artificial silk was held dutiable as waste not specially provided for under paragraph 463, tariff act of 1897, as claimed by the importers.

No. 14507.—Belts in Part of Silk.—Protest 223185 of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinion by Fischer, G. A.

Protest sustained as to a portion of the goods on the authority of G. A. 6498 (T. D. 27780), relating to belts in part of silk.

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No. 14508.—FISHHOOKS.—Protests 220559, etc., of Wm. Wills & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinion by Fischer, G. A.

The importers' contention was sustained as to a portion of the goods on the authority of G. A. 6494 (T. D. 27764), relating to fishhooks.

No. 14509.—POST CARDS.—Protest 214823 of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6369 (T. D. 27359), relating to post cards.

No. 14510.—PROTESTS ABANDONED.—Protests 221661-23031, etc., of A. B. Fiedler & Sons against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

No. 14511.—PROTEST UNSUPPORTED.—Protest 222311 of Benziger Brothers and protest 223187 of Weiller & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), February 18, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14512.—PROTEST UNSUPPORTED.—Protest 223419 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 14511 (*supra*).

No. 14513.—PROTEST UNSUPPORTED.—Protest 221654-22919 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14511 (*supra*).

No. 14514.—PROTEST UNSUPPORTED.—Protest 223417 of A. Nielen & Co. against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 14511 (*supra*).

No. 14515.—PROTEST UNSUPPORTED.—Protest 194651 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14511 (*supra*).

(T. D. 27938.)

Common carrier.

Approving bond of Alaska Pacific Steamship Company for the transportation of unappraised merchandise from Port Townsend, Wash., to San Francisco, Cal., and between the ports of Port Townsend, Tacoma, Everett, and Seattle, Wash.

TREASURY DEPARTMENT, *February 23, 1907.*

SIR: The bond of the Alaska Pacific Steamship Company, transmitted with your letter of the 8th instant, for the transportation of

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unappraised merchandise from Port Townsend, Wash., to San Francisco, Cal., and between the ports of Port Townsend, Tacoma, Everett, and Seattle, Wash., is hereby approved, and one copy of the bond inclosed for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Port Townsend to San Francisco, and between the ports of Port Townsend, Tacoma, Everett, and Seattle, in suitable American vessels owned or controlled by said company and plying upon the waters of Puget Sound and the Pacific Ocean.

Respectfully, JAMES B. REYNOLDS,
(43846.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Port Townsend, Wash.*

(T. D. 27939.)

Cancellation of drawback bonds.

[Circular No. 13.]

TREASURY DEPARTMENT, *February 25, 1907.*

To collectors and other officers of the customs:

You are hereby authorized to cancel bonds given for the production of evidence of landing abroad of articles manufactured, under section 30 of the tariff act of July 24, 1897, and exported by sea, where the amount of drawback exceeds $100, upon the production of landing certificates signed by the consignee, or by the foreign revenue officer, or by the vessel's agent at the place of landing, in the following form:

PORT OF ———, ———, 190–.

I, ——— ———, of ———, do hereby certify that the merchandise hereinafter described, shipped by ——— at the port of ———, on board the ———, on or about the ——— day of ———, 190–, has been landed at this port from on board the ———, on or about the ——— day of ———, 190–. (Here describe the merchandise.)

[SEAL.] ——— ———.

Subscribed and sworn to before me this ——— day of ———, 190–.

[SEAL.] ——— ———.

The foregoing jurat should be attached when the certificate is signed by the consignee, or by the vessel's agent, and it should be sworn to before a notary public or other official administering oaths and having an official seal.

LESLIE M. SHAW, *Secretary.*

(T. D. 27940.)

Free entry—Animals as theatrical properties.

Performing animals imported for exhibition in theaters and menageries free of duty under paragraph 645, tariff act of 1897.

TREASURY DEPARTMENT, *February 25, 1907.*

SIR: In reply to your letter of the 20th instant, I have to inform you that the Department is of the opinion that trained or performing animals imported for use or exhibition in theaters or menageries, are

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entitled to entry under bond, under the provisions of paragraph 645 of the act of 1897, for the entry of theatrical scenery, properties, and apparel.

Respectfully, JAMES B. REYNOLDS,
(44570.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27941.)

Joint regulations concerning mail importations.

TREASURY DEPARTMENT, *February 26, 1907.*

To collectors and other officers of the customs:

The appended joint regulations covering mail importations are hereby promulgated for your information.

A circular containing detailed instructions and embodying these regulations will follow.

LESLIE M. SHAW, *Secretary.*

JOINT REGULATIONS GOVERNING THE TREATMENT OF DUTIABLE AND SUPPOSED DUTIABLE ARTICLES RECEIVED IN THE MAILS FROM FOREIGN COUNTRIES.

1. *Detail of customs officers; proper facilities; notice of arrival of foreign mails.*—Whenever necessary to properly safeguard the revenue and expedite the delivery of foreign mails, collectors of customs will detail competent subordinates for duty at exchange post-offices of receipt, at which offices postmasters will provide proper facilities for the treatment of foreign mail packages by customs officers, and shall keep such officers advised of the prospective arrival of each mail from abroad.

2. *Segregation of foreign mails at exchange post-offices of receipt.*—Customs officers are authorized to be present at the opening and distribution at exchange post-offices of receipt of mails from abroad, and to first segregate the dutiable and supposed dutiable packages, sealed and unsealed, registered and not registered (registered only in the presence of an authorized representative of a postmaster), from those clearly nondutiable. Letters in their usual and ordinary form will be segregated by postal employees.

3. *Letters and packages for ambassadors, etc.*—Letters and packages, sealed and unsealed, registered and not registered, addressed to ambassadors, ministers, and chargés d'affaires representing foreign governments at Washington will be delivered to the addressees by postmasters without submission to or the intervention of customs officers.

4. *Letters and packages for consuls, etc.*—Letters and sealed packages addressed to consular and other officers not mentioned above, bearing the seal of the foreign government or inclosed in its official

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envelope and indicating from a casual examination by a customs officer, when such officer is available for the purpose, or by a postmaster when a customs officer is not available, without breaking the seal, that they contain only official documents, shall be immediately forwarded to the parties addressed. If letters and packages so addressed bear the appearance of containing merchandise of any character, they will be treated in the manner provided in these regulations for sealed packages.

Unsealed parcels so addressed will be treated in the manner provided in these regulations for unsealed parcels.

5. *Letters and packages for Government officials.*—Letters and sealed packages addressed to officials of the United States Government which, from a casual examination by a customs officer, when such officer is available for the purpose, or by a postmaster when a customs officer is not available, appear to contain only official documents, shall be immediately forwarded to the parties addressed. If letters and sealed packages so addressed bear the appearance of containing merchandise of any character, they will be treated in the manner provided in these regulations for sealed packages.

Unsealed parcels so addressed shall be treated in the manner provided in these regulations for unsealed parcels.

6. *Diplomatic or official pouches.*—It is not permissible to place dutiable or prohibited articles, sealed or unsealed, in "diplomatic pouches," so called, going directly to the Department of State. Such articles found therein are subject to the customs laws and regulations.

7. *Test to determine whether an unsealed parcel is a universal postal or parcels-post convention parcel.*—The test to determine whether an unsealed dutiable parcel is liable to the provisions of the universal postal or parcels-post convention when received from a country party to these two conventions, and with which there is no postal convention, or to which domestic postal conditions have not been applied, shall be the declaration which is required to accompany parcels-post packages. In the absence of a declaration, the parcel shall be treated as a universal postal convention parcel, but may, however, be segregated and examined by customs officers at exchange offices of receipt, as is done in the case of parcels-post packages.

8. *Labels.*—For the purpose of tracing letters and sealed packages which may be liable to customs duty, *labels* designated Form "A" and Form "B," bearing serial numbers and the legend "Supposed liable to customs duty," will be furnished and should be attached to such letters and packages by customs officers when available, and by postal employees in the absence of customs officers. The instructions printed on the labels must be carefully observed.

These labels are *not* to be used when letters or sealed packages are for delivery within the limits of the exchange post-offices at which

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they are received from abroad, but, instead, such letters and packages are to be *stamped* by the segregating officer "Supposed liable to customs duty."

9. *Sealed package defined.*—A sealed package is such as can not be opened without destroying the wrapper or causing material damage to the contents.

10. *Sealed packages from Canada, Mexico, Cuba, and the Republic of Panama.*—Sealed packages other than letters in their usual and ordinary form from Canada, Mexico, Cuba, and the Republic of Panama shall be immediately returned by exchange post-offices of receipt to the foreign exchange post-offices from which they were dispatched.

11. *Sealed packages for delivery at exchange post-offices of receipt.*—Sealed packages, registered and not registered (except letters in their usual and ordinary form), for delivery at exchange post-offices at which received from abroad shall, after being segregated—the supposed dutiable from the nondutiable—by customs officers, and the supposed dutiable so *stamped* by said officers, be left in the custody of postmasters, who will immediately notify the addressees on the general form provided for that purpose by the Post-Office Department of the receipt of the packages, and to appear and open the same in the presence of a customs officer. The packages opened, the addressees will be required to at once hand the same to a customs officer for examination, and, if dutiable, the issuance of mail entries and the collection of the proper charges, after which the packages shall be delivered to the addressees by a customs officer.

Registered packages will be segregated only in the presence of an authorized representative of the postmaster, and shall be receipted for by the addressees before being opened.

12. *Sealed packages for delivery at offices other than exchange post-offices of receipt.*—Sealed packages, registered and not registered (except letters in their usual and ordinary form), for delivery outside of exchange post-offices at which received from abroad, will, after they are segregated—the supposed dutiable from the nondutiable—by customs officers, and the supposed dutiable properly *labeled* by said officers, be promptly forwarded by postmasters to the post-offices of delivery. Upon receipt of such a package at a post-office of delivery the postmaster will notify the addressee on the general form provided by the Post-Office Department of its receipt, and to appear and open the same in the presence of a customs officer, if one be located at said office. The package opened, the addressee will be required to at once hand the same to the customs officer for examination, and, if dutiable, the issuance of a mail entry and the collection of the proper charges, after which the package shall be delivered to the addressee by the customs officer.

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If no customs officer is located at the post-office of delivery, the package will be opened in the presence of the postmaster, who will immediately thereafter forward the same, under official registration, to the postmaster at the place where the nearest customs officer is located, for submission to said officer, that he may determine whether the contents are in fact dutiable. The customs officer will promptly examine the contents and, if dutiable, issue a mail entry to cover the proper customs charges, place the same in the envelope provided for the purpose by the Treasury Department, and securely attach the envelope to the package, which should be promptly returned, under official registration, to the postmaster at the post-office of delivery, who will collect the customs charges and transmit the same, together with the mail entry, in registered letter, using penalty envelope, to the customs officer who issued the entry.

Registered packages will be segregated only in the presence of an authorized representative of the postmaster, and shall be receipted for by the addressees before being opened.

When a postmaster is not advised as to the location of the "nearest customs officer" this information will be furnished upon application to the Secretary of the Treasury.

13. *Letters for delivery at exchange post-offices of receipt.*—Letters in their usual and ordinary form, registered and not registered, for delivery at exchange post-offices at which received from abroad shall be segregated—the supposed dutiable from the nondutiable—by *postal* employees, and the supposed dutiable so stamped by said employees, after which they will be treated in the manner provided in these regulations for sealed packages for delivery at exchange post-offices of receipt.

14. *Letters for delivery at offices other than exchange post-offices of receipt.*—Supposed dutiable letters in their usual and ordinary form, registered and not registered, for delivery at post-offices other than the exchange offices at which received from abroad will be segregated and stamped "Supposed liable to customs duty" by *postal* employees, after which they will be treated by postmasters at offices of delivery in the manner provided in these regulations for sealed packages for delivery at offices other than exchange post-offices of receipt.

15. *Letters distributed by railway post-offices.*—Letters which may contain dutiable articles received and distributed by railway post-offices exchanging mails with Canada, Mexico, and Cuba, will be properly labeled (Form "A" or "B," as the case may be) "Supposed liable to customs duty" by railway postal clerks, and forwarded to destination, care being taken to follow the instructions printed on said labels. Postmasters at offices of delivery will apply the regulations for sealed packages for delivery at offices other than exchange post-offices of receipt.

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16. *Failure of addressees to respond to notices to appear.*—If an addressee fails to respond within thirty days to the notice sent him of the receipt of a letter or sealed package, the same will be treated as undelivered, except in the case of a registered package which, under the postal regulations, is required to be held for a longer period.

17. *Refusal of addressees to accept delivery of letters and sealed packages.*—If an addressee of a letter or sealed package supposed liable to duty, after opening the same for the purpose of customs inspection, declines to accept delivery of the article, it shall be reclosed by means of an "official seal" of the Post-Office Department, marked "Refused," and treated as other undeliverable sealed articles, and the receipt in the case of a registered package shall be so marked.

18. *Seizure of letters and sealed packages.*—Postmasters retain custody of letters and sealed packages until they are opened by addressees. Therefore customs officers will not open or seize any letter or sealed package until after it is opened by the addressee. Seizable packages for delivery at offices where there is no customs officer may, upon request of a customs officer, be taken into custody by postmasters, after being opened by addressees, and forwarded to said officer.

19. *Letters and sealed packages smuggled and placed in domestic mails.*—When a customs officer can establish to the satisfaction of a postmaster or a clerk in charge of a railway post-office that a dutiable letter or sealed package has been smuggled into the United States and placed in the mails, it shall be the duty of the postmaster or railway postal clerk in charge to label or permit the customs officer to label such package "Supposed liable to customs duty." In addition, the officer labeling the package shall place thereon the word "Smuggled." The package shall then be forwarded to the office of delivery. Upon receipt of the package at the office of delivery, the postmaster shall notify the addressee to appear, receipt for in the case of a registered package, and open the same. When the package has been opened, it shall be delivered into the custody of the nearest customs officer, who will be governed in the treatment thereof by the customs laws and regulations in relation to the seizure and forfeiture of smuggled articles.

20. *Fines collected on letters and sealed packages can not be refunded.*—Customs fines collected on letters and sealed packages can not be refunded. If any dissatisfaction exists, payment should be suspended, and notice given to postmasters, who will hold the goods and immediately communicate the grounds of objection to the collectors of customs issuing the entries and forward to them such papers or statements as the addressees may submit.

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21. *Undelivered letters and sealed packages.*—Undelivered letters and sealed packages supposed to contain dutiable articles when returned to the country of origin are to be forwarded through the Division of Dead Letters, Post-Office Department, or the exchange post-offices, as provided in the postal laws and regulations.

22. *Redirected letters and sealed packages.*—When a supposed dutiable letter or sealed package is redirected from one post-office to another, the postmaster at the forwarding office must be careful to see that the label "Supposed liable to customs duty" remains attached thereto, and shall notify the collector of customs as per label Form "A" or the Auditor for the Treasury Department as per label Form "B," as in the case of undeliverable articles, stating the date of forwarding and name of post-office to which forwarded.

23. *Unsealed parcels for delivery at exchange post-offices of receipt.*—Unsealed parcels, registered and not registered, for delivery at exchange post-offices at which received from abroad shall upon arrival at such offices be first segregated—the dutiable from the nondutiable—and examined by customs officers. Said officers will prepare mail entries to cover the duties on parcels found to be dutiable, which entries shall be securely attached to the parcels, and the latter left in the custody of postmasters, who will cause the delivery thereof and the collection of the duties. The sums so collected, together with the entries, should be promptly handed to the proper customs officers.

Registered parcels will be segregated and examined only in the presence of an authorized representative of a postmaster.

24. *Unsealed parcels for delivery at offices other than exchange post-offices of receipt.*—Unsealed parcels, registered and not registered, for delivery outside of exchange post-offices at which received from abroad shall, as before, be segregated and examined by customs officers. Said officers will prepare mail entries to cover the duties on parcels found to be dutiable and place said entries in envelopes provided for that purpose, which envelopes should be securely attached to the parcels and the latter left in the custody of postmasters. Postmasters will promptly forward such parcels to the post-offices of delivery. Upon receipt of the parcels at post-offices of delivery postmasters will, on delivery to addressees, collect the duties and forward the same, together with the mail entries, in registered letters, using penalty envelopes, to the customs officers who issued the entries.

25. *Unsealed ordinary parcels distributed by railway post-offices.*—Unsealed ordinary parcels from Canada, Mexico, and Cuba, distributed by railway post-offices will be segregated—the supposed dutiable from the nondutiable—by railway postal clerks, and the supposed

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dutiable parcels placed in sacks or packages, which are to be closed, marked "Supposed liable to customs duty," and forwarded to the post-office nearest the end of their run at which there is a customs officer. The postmaster at such office will promptly submit the sacks or packages to the customs officer, who will follow the regulations for the treatment of unsealed parcels for delivery at exchange post-offices or offices other than exchange post-offices, as the case may be.

26. *Redirected unsealed parcels.*—When an unsealed parcel is redirected from one post-office to another, the postmaster at the forwarding office will be careful to see that the customs mail entry covering the duty accompanies the parcel to the office of delivery.

27. *Refusal of addressees to accept delivery of unsealed parcels.*—Should an addressee refuse to accept delivery of an unsealed dutiable parcel, the same shall be treated in the manner provided in these regulations for undelivered unsealed parcels, except in the case of an unsealed universal postal convention parcel, which should be treated as an undelivered sealed parcel.

28. *Undelivered unsealed parcels.*—Undeliverable unsealed dutiable parcels (except registered from Cuba and the Republic of Panama) from Canada, Mexico, Cuba, and the Republic of Panama will be specially returned by postmasters at post-offices of delivery within a period of thirty days from the date of their receipt at such offices, under official registration, marked to show why they were not delivered, to the collector of customs at the United States exchange post-offices of receipt issuing the mail entries covering such parcels. Collectors of customs will, after satisfying themselves that the mail entries correspond therewith, hand the parcels to the postmasters at the exchange offices for return to the country of origin.

Unsealed registered parcels from Cuba and the Republic of Panama will be returned through the Division of Dead Letters, Post-Office Department.

29. *Disposition of letters and sealed or unsealed parcels not returned to country of origin.*—If for any cause an undelivered supposed or known dutiable letter, or sealed or unsealed parcel, is not returned to the country of origin, it shall be delivered to the proper customs officer for disposition under the customs laws and regulations governing seized or unclaimed articles, as the case may be.

30. *Unsealed dutiable parcels smuggled into the United States and placed in the mails.*—When a customs officer can establish to the satisfaction of a postmaster or clerk in charge of a railway post-office that an unsealed dutiable parcel has been smuggled into the United States, and placed in the mails, it shall be the duty of the postmaster or clerk in charge of the railway post-office to deliver the parcel (except in the case of a registered parcel which will be treated as a

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sealed registered smuggled package) into the custody of the customs officer for proper disposition under the customs laws and regulations. The customs officer will at once notify the addressee of the parcel of the seizure thereof and the reason therefor.

31. *Customs mail entries.*—Customs officers will issue mail entries to cover each dutiable article, sealed or unsealed, examined by them. Such entries covering undeliverable dutiable articles must be marked by postmasters to show how the articles were disposed of at their offices and returned to the collectors of customs who issued them.

32. *Stamping nondutiable letters and sealed or unsealed parcels.*—When a customs officer determines that any letter, or sealed or unsealed parcel, examined by him is not dutiable, he shall stamp it "Passed free of duty" or "Not dutiable," attach his initials or full signature, and state the name of the port.

33. *Failure of customs officers to take prompt action.*—Should a customs officer fail to take prompt action concerning any letter, or sealed or unsealed parcel, submitted to him for examination by a postmaster, the Secretary of the Treasury should be duly notified by such postmaster.

34. *Failure of postmasters to make prompt return of customs collections.*—If a postmaster fails to make return of customs collections within thirty days from the date of the issuance of a mail customs entry, the customs officer issuing such entry will report the facts to the chief post-office inspector, Post-Office Department, Washington, D. C., for investigation. The chief post-office inspector will promptly advise the customs officer of the result of such investigation.

35. *Failure to detect dutiable articles at exchange offices.*—Should a letter, or sealed or unsealed parcel, containing articles supposed or known to be dutiable escape detection at an exchange office of receipt, it shall be the duty of the postmaster at the office of delivery to submit the package to the nearest customs officer for proper action.

36. *Prohibited importations.*—Postmasters and customs officers will take special notice of the postal and customs regulations concerning copyrighted and other articles prohibited importation in the mails.

37. *Examination of newspapers by customs officers.*—Postmasters at exchange offices of receipt will permit customs officers to examine, at irregular intervals, and at least once every thirty days, newspapers received in the mails from foreign countries. If deemed necessary for the protection of the revenue such newspapers may be examined at more frequent intervals.

38. *Careless or improper repacking.*—Postal and customs employees must exercise the utmost care in repacking articles contained in parcels opened by them. In any case where it can be shown that an article has sustained damage as the result of careless or improper

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repacking, the postal or customs employee who repacked the article will be held responsible for the damage.

39. *Mails not to be delayed.*—The mails are not to be unnecessarily delayed in order to search for dutiable articles.

All regulations, decisions, or orders inconsistent with these joint regulations are hereby revoked.

The above regulations are hereby adopted.

LESLIE M. SHAW,
Secretary of the Treasury.
GEO. B. CORTELYOU,
Postmaster-General.

WASHINGTON, D. C., *February 25, 1907.*

FORMS PROVIDED FOR BY FOREGOING REGULATIONS.

LABEL.—FORM "A."

To be securely attached to package.

Serial No. —.

SUPPOSED LIABLE TO CUSTOMS DUTY.

Postmaster: Treat this package as required by *joint* regulations, approved February 25, 1907, for letters and sealed packages, for delivery at other than exchange post-offices of receipt.

If package undeliverable state cause, how disposed of, and give serial number to collector of customs at post-office of delivery.

LABEL.—FORM "A."

COUPON—To be detached (see Note).

Serial No. —.

To be used exclusively for letters and sealed packages for delivery at Boston, New York, Philadelphia, Baltimore, Chicago, New Orleans, and San Francisco. Not to be used when letter or package is for delivery at exchange post-office of receipt.

(Office attaching label.)

To Collector of Customs at ——— ———,
(Office of delivery).

Package labeled supposed liable to customs duty forwarded to Postmaster at ——— ———.
(Place to which forwared.)

NOTE.—Officer affixing label will detach and mail this coupon in penalty envelope to collector of customs at place of delivery.

LABEL.—FORM "B."

To be securely attached to package.

Serial No. —.

SUPPOSED LIABLE TO CUSTOMS DUTY.

Postmaster: Treat this package as required by joint regulations approved February 25, 1907, for letters and sealed packages for delivery at offices other than exchange post-offices of receipt.

If package undeliverable state cause, how disposed of, and give serial number to Auditor for Treasury Department, Washington, D. C.

Custom officer will, if package nondutiable, so report to Auditor for Treasury Department, giving serial number.

LABEL.—FORM "B."

COUPON.—To be detached at post-office of delivery.

Serial No. —.

To Auditor for Treasury Department, Washington, D. C.

Package bearing above serial number has been submitted to customs officer at ——— ———.
(Location of customs officer.)

Postmaster at ——— ———.
(Office of delivery.)

NOTE.—Postmaster at office of delivery will promptly detach and mail this coupon to Auditor for Treasury Department, Washington, D. C., using penalty envelope.

LABEL.—FORM "B."

COUPON.—To be detached by officer labeling package.
(See Note.)

Serial No. —.

——— ———.
(Office attaching label.)

Auditor for Treasury Department, Washington, D. C.

Package labeled "SUPPOSED LIABLE TO CUSTOMS DUTY," forwarded to postmaster at ——— ———.
(Office of delivery.)

NOTE.—Officer affixing label will promptly detach and mail this coupon in penalty envelope to Auditor for Treasury Department, Washington, D. C.

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FRONT.

POST-OFFICE ———

Official business.

A penalty of $300 is fixed by law for using this card to avoid payment of postage on private matter.

REVERSE.

POST-OFFICE ———, 190—.

You are hereby informed that an article of .....
(Here state whether registered or not registered.)
mail matter of foreign origin addressed to you has been received at this office, supposed to contain matter liable to customs duties.

Please call at this office between — a. m and — p. m. (Sundays and holidays excepted), and open the article for customs inspection. If not called for within thirty days, the article will be returned to the country of origin, or sent to the Dead Letter Office.

If not convenient to call, you may authorize, in writing, some one to represent you.

.....

Postmaster.

(T. D. 27942.)

Drawback on structural material.

Drawback on structural parts of buildings and bridges manufactured by the Baltimore Bridge Company, of Baltimore, Md., with the use of imported rolled steel beams, angles, channels, flat bars, round bars, Z-bars, tees, and plates.—T. D. 23928 of August 8, 1902, extended.

TREASURY DEPARTMENT, *February 26, 1907.*

SIR: The Department's regulations of August 8, 1902 (T. D. 23928), establishing a rate for the allowance of drawback on structural parts of buildings and bridges manufactured by Milliken Brothers of New York in part from imported rolled shapes, are hereby extended, so far as applicable, to cover the exportation of similar materials manufactured by the Baltimore Bridge Company, of Baltimore, Md., with the use of imported rolled steel beams, angles,

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channels, flat bars, round bars, Z-bars, tees, and plates in accordance with their sworn statement, dated January 23, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(44524.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27943—G. A. 6549.)

Insufficiency of protest.

A protest against the rate assessed on "lithographic prints, or other merchandise," and claiming that the goods are dutiable under paragraph 400, without specifying what rate of duty is claimed of the many provided in said paragraph, or under what portion of the paragraph they should be assessed, and containing no description of the goods, is defective, and, in the absence of a precise description of the goods in the entry or invoice, will be overruled as insufficient.—Herrman *v.* Robertson (152 U. S., 521); Presson *v.* Russell (*ib.*, 577); United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923); Boker *v.* United States (145 Fed. Rep., 1022; T. D. 27192); G. A. 6361 (T. D. 27329) cited and followed.

United States General Appraisers, New York, February 20, 1907.

In the matter of protests 22368, etc., of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise involved in these protests consists of pictorial post cards, upon which duty was assessed at the rate of 25 per cent ad valorem under the provisions of paragraph 403, tariff act of 1897, as printed matter not specially provided for. The claim in the protests reads as follows:

Said merchandise is not dutiable as assessed. It is otherwise more aptly and specifically provided for. It is covered by, and is dutiable under, paragraph 400 at the rate or rates therein provided according to thickness, cutting size, etc.

These protests are not a sufficient compliance with the requirements of section 14 of the act of June 10, 1890, that the importer in his protest shall set forth "distinctly and specifically" his objections to the decision of the collector. Discarding the words that follow the numeral 400 in the above excerpt from the protest, for they add nothing to the specificness of the claim, we have merely a bald claim that the goods are "dutiable under paragraph 400." The case is precisely within the ruling of the court in Boker *v.* United States (140 Fed. Rep., 115; T. D. 26451), affirmed by the circuit court of appeals in 145 Federal Reporter, 1022 (T. D. 27192). In his opinion Judge Townsend said:

The paragraph is a long one, the protest fails to state on what grounds the objection is made, or what rate of duty is claimed. It is therefore insufficient within the rule that "the importer shall set forth in his protest distinctly and specifically the reasons for his objections to the assessment." United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923).

The analogy between the Boker case and those now before us is perfect. Paragraph 400 is a long one; it is much longer than 137, the paragraph which was referred to by Judge Townsend; it provides

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for several different classes of goods and prescribes no less than eleven different rates of duty applicable thereto. Yet the protest does not mention which of these many rates of duty is claimed, and nowhere, either in the protests, invoices, or entries, is there any description of the goods which would enable the collector to fix the rate of duty applicable in case he had made an error in his original classification of the goods. The protests purport to be against the rate assessed on "lithographic prints *or other merchandise;*" the invoices describe the goods as "illustrated post cards;" they appear in the entries as "photographs."

The protests are defective in that (1) they do not point out the portion of the paragraph applicable to the goods, said paragraph providing for a variety of goods at different rates of duty; (2) they do not mention what rate of duty is claimed; (3) they do not describe the goods; and, following the rulings in Herrman *v.* Robertson (152 U. S., 521), Presson *v.* Russell (*ib.*, 577), United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923), Boker *v.* United States (145 Fed. Rep., 1022; T. D. 27192), G. A. 6361 (T. D. 27329), and numerous other decisions of the courts and the Board, we hold that they are insufficient. They are hereby overruled and the decisions of the collector thereon will stand.

(T. D. 27944—G. A. 6550.)

Thick soy—"Sauces."

1. "SAUCES."

The word "sauces," as used in paragraph 241, tariff act of 1897, refers only to substances primarily intended to be added as an appetizing dressing to food after the substantial part of the dish is prepared, and can not be extended to include all flavoring or seasoning matters used in cookery.

2. THICK SOY.

So-called thick soy, a dark-brown liquid made from the soy bean and other ingredients and thickened to the consistency of molasses by the addition of sugar, treacle, or molasses, which is used as a flavoring and coloring matter in cooking and in the manufacture of Worcestershire sauce, but not to any substantial extent as a table condiment or to put on food which has been prepared and is ready to be served, is not a "sauce" within the meaning of said paragraph 241.

3. THICK SOY—THIN SOY—SIMILITUDE—UNENUMERATED ARTICLE.

Thick soy, while having in part as component materials thin soy or the ingredients of thin soy, which is concededly a sauce, is not similar to the latter in the *use* which distinguishes it as a sauce. There being doubt whether a composite substance like thick soy is "similar in *material* or *quality*," in the tariff sense, to one or more of its component materials considered separately, the article should be classified as an unenumerated article under section 6.

United States General Appraisers, New York, February 21, 1907.

In the matter of protest 199464 of Wo On & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The case presents the question whether so-called thick soy, from China, shall be assessed at 40 per

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cent ad valorem under the provision for "sauces of all kinds" in paragraph 241 of the tariff act of 1897, or as an unenumerated manufactured article at 20 per cent under section 6. In a former ruling the Board held it to be dutiable under section 6. *In re* Benneche, G. A. 6392 (T. D. 27455). The Government now renews the contest and introduces considerable further testimony with the object of establishing its contention that thick soy is a sauce.

Thin soy, so called, is concededly a table condiment of Chinese and Japanese origin. It is made from the soy bean with other ingredients, and has a sharp, salty taste and a flavor suggestive of Worcestershire sauce. As its name implies, it is considerably more fluid than the thick soy, being over 60 per cent water. It may be transformed into thick soy by the addition of the substances mentioned below. Thick soy, on the other hand, contains only 20 per cent of water and is made by adding molasses, treacle, or sugar, and perhaps licorice, to the same ingredients as are used in thin soy and boiling the mixture down. The sample before the Board is a dark-brown liquid, having the consistency of molasses, a sweetish taste, and some flavor of licorice. The Chinese name for thick soy is said to be "gee yiu," which is translated by the Chinese witnesses "thick sauce," although one of them intimated that the word "yiu" might be used to indicate "oil" as well as "sauce." Thick soy is used by the Chinese as a coloring or flavoring matter in cooking meats, stews, gravies, and other dishes, and is an ingredient in the manufacture of the so-called Worcestershire sauce. By adding salt and water it is said that thick soy may be made suitable for the same purposes as the thin, the water and salt diluting and neutralizing the sugar. There is also evidence tending to prove that substances which are admittedly sauces are sometimes used in cooking and in making other sauces, the instance cited being the use of Worcestershire sauce in preparing soups and concocting mayonnaise and other sauces.

The above are believed to be the essential facts deducible from the record, except as hereinafter noted, and in the light of this evidence the Board is asked to reverse its former decision and hold that thick soy is a "sauce," within the meaning of paragraph 241; if not directly, then by similitude in material, quality, or use under section 7 of the act.

It seems clear, however, that soy in the thick state is not used to any substantial extent as a condiment on the table or to put on food which has been prepared and is ready to be served, and this, it appears to the Board, is the test which distinguishes what are commonly known as sauces from the various other flavoring and seasoning substances used in cookery. The physical characteristics and uses of thick soy are hardly described by the expressions found in the ordinary definitions of "sauce," such as "an appetizing dressing

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for food," or, "a condiment * * * *now usually an accompaniment to food,* * * * highly seasoned or flavored, eaten as a relish, an appetizer, or a digestive" (italics ours). The idea that sauces are used ordinarily at the table with meals or as an addition to a dish already prepared seems implied in the Supreme Court's definition of "sauce" found in Bogle *v.* Magone (152 U. S., 623), to wit:

> The word "sauce," as commonly used, designates a condiment, generally but not always of liquid form, *eaten as an addition to and together with* (italics ours) a dish of food, to give it flavor and make it more palatable.

No broader meaning can be given the term without making it inclusive of any matter used to season or flavor food in the process of cooking or preparing it. Sauces, it is true, are often used in this manner and as ingredients in other sauces, but it does not follow that everything so used is a sauce, the distinguishing characteristic of which is its adaptability to be added as an appetizing dressing after the substantial part of the dish is prepared. It seems not improbable that the thickening of the soy by the sugar, the treacle, or the licorice has rendered it unpalatable as a condiment, at the same time giving it body and making it more valuable for cooking.

Coming now to the question of similitude, what has been said above is thought sufficient to preclude a finding that there is substantial similitude in *use* between thick soy and sauce properly so called. It is urged that the substance is so closely related to thin soy that there is similitude in *material* and *quality* to that form of sauce, and stress is laid upon the fact that the latter may be produced by merely diluting the former with salt and water. The testimony is not convincing that thick soy is reduced to the thin for use as a sauce in substantial quantities. If it were, why the addition of the treacle or molasses to thicken it only to undo this process when rendering it into sauce? It seems more in accord with the probabilities that thick soy is manufactured for the specific purposes heretofore mentioned. In any event, as the article is imported, thin soy or the ingredients of thin soy are but components of the substance known as thick soy. Sugar, treacle, or molasses, as the case may be, is an important element of the latter, an analysis of which shows over 18 per cent of cane sugar. Must we therefore hold that thick soy is similar in material and quality to the sauce known as thin soy because it contains thin soy or the ingredients of thin soy? We think it very questionable whether a composite substance like this can be said to be "similar," in the tariff sense, to one or more of its component materials, considered separately. Heeding the caution of the learned judge in United States *v.* Proctor (145 Fed. Rep., 126; T. D. 27115) that "it may be dangerous to illustrate by specific analogies what is perhaps mainly a matter of common-sense perception," we nevertheless think that ruling supports the

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proposition just made. It was there held that extract of nutgalls containing a considerable percentage of tannic acid was not dutiable by similitude as "tannic acid."

While the above considerations seem to warrant a decision sustaining the protest, they do not entirely remove the doubts concerning the application of paragraph 241 and the similitude clause suggested by the able presentation of the case in behalf of the Government. So long as doubt refuses to give place to certainty, however, the questions propounded can only be answered in favor of the importer—a solution which appeals to us the more strongly because of the unique character of the article itself. United States *v.* Nishimiya (137 Fed. Rep., 396; T. D. 26155).

The protest is sustained so far as it claims the rate of 20 per cent under section 6, but only with respect to the contents of casks numbered 380/99, 400/39, and 500/19, to which the controversy was limited at the hearing. Other claims in the protest are not supported by evidence and were not urged. The collector's decision is modified to accord with this ruling.

(T. D. 27945.)

Abstracts of decisions of the Board of General Appraisers.

No. 14516.—Leaf Tobacco.—Protest 206566 of Starlight Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found that the bale in question, No. 1654, contained 90 per cent of filler tobacco, and modified the collector's classification accordingly.

No. 14517.—Fish Sounds.—Protest 220894 of Cerecedo Hermanos & Co. against the assessment of duty by the collector of customs at the port of San Juan. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Lunt, G. A.

The goods were held to have been properly classified as prepared fish sounds under paragraph 23, tariff act of 1897. G. A. 5094 (T. D. 23562) noted.

No. 14518.—Chemical Glassware.—Protests 224890, etc., of Denver Fire Clay Company against the assessment of duty by the surveyor of customs at the port of Denver. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Sharretts, G. A.

The protests related to chemical glassware, which was held to have been properly classified under paragraph 100, tariff act of 1897, relating to blown and ground glass. Note G. A. 6429 (T. D. 27584).

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No. 14519.—Fresnel Lenses.—Protest 226331 of Fensterer & Ruhe against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Sharretts, G. A.

On authority of G. A. 6463 (T. D. 27669), the Board held Fresnel lenses to be dutiable under paragraph 109, tariff act of 1897, relating to lenses of various classes. Protest sustained.

No. 14520.—Reconstructed Rubies.—Protests 226844, etc., of L. Heller & Sons *et al.*, protests 226874, etc., of Albert Lorsch & Co., and protest 129685 of N. Salter against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinions by Sharretts, G. A.

Protests sustained on the authority of G. A. 6336 (T. D. 27278), relating to reconstructed rubies.

No. 14521.—Brass Snaps.—Protests 226480; etc., of J. D. Gluck & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6330 (T. D. 27255), relating to brass snaps.

No. 14522.—Ornaments—Pins.—Protest 226856 of Kraemer & Foster, protests 226680, etc., of Samstag & Hilder Brothers *et al.*, and protests 99913*f*, etc., of Simpson, Crawford & Simpson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinions by Sharretts, G. A.

G. A. 6130 (T. D. 26553), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390) followed, relating to ornaments and pins.

No. 14523.—Pins.—Protests 221718-23246, etc., of Edson Keith & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Sharretts, G. A.

G. A. 6376 (T. D. 27390) followed, relating to pins.

No. 14524.—Ornaments.—Protest 189137 of Sennenfeld Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Sharretts, G. A.

G. A. 6374 (T. D. 27382) followed, relating to ornaments.

No. 14525.—Stone Lanterns—Dressed Granite.—Protests 166871, etc., of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907.

The protests related to so-called stone lanterns, classified as dressed granite under paragraph 118, tariff act of 1897. Assessment affirmed on the authority of G. A. 5835 (T. D. 25748).

McClelland, *General Appraiser:* * * * The testimony shows that the "stone lanterns" when set up are from 2½ feet to 5 feet high, varying in width from 1 foot

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to 3 feet, made of granite and other stone. Photographs introduced in evidence show the pieces to have been cut and dressed, consisting of bases, dies, and caps, the top dies having holes or openings bored or cut through the ends; also, one or more holes bored or cut through the sides thereof, through which artificial light may be projected. The photographs also represent the pieces assembled in the form of monuments, and it also appears from the evidence that these pieces are put together and set up in parks or graveyards.

No. 14526.—GRANITE MONUMENTS.—Protest 167844 of H. & A. Allan against the assessment of duty by the collector of customs at the port of Boston. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of Baldwin *v.* United States (T. D. 27802), relating to granite monuments.

No. 14527.—GRANITE MONUMENTS.—Protest 215187 of A. Murphy & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14526 (*supra*).

No. 14528.—BIRCH-BARK CANOE.—Protest 223491 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907.

The importers contended that a birch-bark canoe, classified as manufactures of wood by similitude under paragraph 208, tariff act of 1897, should have been classified as an unenumerated manufactured article under section 6. Protest overruled. Note G. A. 5803 (T. D. 25644).

MCCLELLAND, *General Appraiser:* * * * Reference is made in the protest to Abstract 11774 (T. D. 27426) and to G. A. 3998 (T. D. 18542). Birch bark cut into sizes convenient for shipment in bundles has been held by the Board to be dutiable at the rate of 10 per cent ad valorem under section 6 as a nonenumerated unmanufactured article, Abstract 11774 (*supra*). When birch bark is used as a substitute for wood or in combination therewith to form completed articles, it is apparent that for tariff purposes birch bark then becomes similar to wood in use, and should be dutiable as such.

No. 14529.—SILVER-MOUNTED WHIPS.—Protests 199179, etc., of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907. Opinion by Fischer, G. A.

The protest related to silver-mounted whips and crops, which the Board held to have been properly classified as manufactures of metal under paragraph 193, tariff act of 1897.

No. 14530.—ALUMINUM STRIPS.—Protest 221218 of Lunham & Moore against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907.

The importers objected to the classification of the merchandise as articles of aluminum under paragraph 193, tariff act of 1897, contending that it was dutiable under paragraph 172. Protest overruled.

FISCHER, *General Appraiser:* * * * We are of opinion that this claim is untenable. The testimony of the importers' witness, the only one called, shows that the strips are about 300 feet long, one-half inch wide, and that they are made especially for use in name-plate slot machines. The pertinent provision of paragraph 172 is restricted to aluminum in plates, sheets, bars, and rods, and it is manifest that the goods in question are none of these.

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No. 14531.—Post Cards.—Protests 221656-23287, etc., of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers) February 19, 1907. Opinion by Fischer, G. A.

The protests related to pictorial post cards, classified as printed matter under paragraph 403, tariff act of 1897, and claimed to be dutiable as lithographic prints under paragraph 400. Protests overruled.

No. 14532.—Coverings for Fancy Paper Boxes.—Protests 221657-23035, etc., of American Shipping Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907.

The protests related to fancy paper boxes packed in plain paper boxes. The collector assessed duty on the value of the whole at the rate provided in paragraph 405, tariff act of 1897, relating to fancy paper boxes. The importers contended that the assessment should have been made under the provision in paragraph 407 for manufactures of paper. Protests overruled.

Fischer, *General Appraiser:* * * * No evidence was offered by the importers, the cases having been submitted for decision on the record and samples. The appraiser reports that the plain paper boxes are the ordinary coverings of the fancy boxes and that they are properly part of the cost of packing. As no evidence traversing this statement has been offered by the importers, it must be taken to be correct, and this being so the assessment complained of must stand, for the smaller boxes contained in the plain boxes are unquestionably fancy paper boxes. There is no proof before us that would bring these cases within the rule enunciated in Abstract 9683 (T. D. 26997), on which they were submitted for decision.

No. 14533.—Wood Jewel Boxes.—Protest 221670-23016 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907. Opinion by Fischer, G. A.

Jewel boxes of wood, paper, and silk, which were classified as fancy paper boxes under paragraph 405, tariff act of 1897, were held dutiable as manufactures in chief value of wood under paragraph 208, as claimed by the importers.

No. 14534.—Silk Fabrics.—Protest 162356 of Kohn, Adler & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907. Opinion by Howell, G. A.

The goods were classified as silk trimmings under paragraph 390, tariff act of 1897, and were claimed to be dutiable as silk fabrics under paragraph 387. Protest sustained.

No. 14535.—Figured Cotton Cloth.—Protests 233206, etc., of H. S. Beer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 19, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 14536.—Decorated Earthenware.—Protest 216443 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent), February 19, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 5336 (T. D. 24424), relating to decorated earthenware.

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No. 14537.—PROTEST AGAINST VALUATION.—Protests 224279, etc., of A. L. Silberstein against the assessment of duty by the collector of customs at the port of Bangor. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 19, 1907. Opinion by Hay, G. A.

The protests raised only a question of valuation, and were therefore dismissed

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No. 14538.—PROTEST ABANDONED.—Protest 229612 of John W. Merriam & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinion by Lunt, G. A.

Protest abandoned; overruled.

No. 14539.—PROTESTS UNSUPPORTED.—Protest 19668*f* of Fensterer & Ruhe, protest 191524 of G. Hirsch's Sons, and protest 108695 of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 19, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 14540.—PROTEST UNSUPPORTED.—Protest 201380 of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14539 (*supra*).

No. 14541.—PROTEST UNSUPPORTED.—Protest 221674–23249 of G. W. Sheldon & Co. and protest 224866–23369 of Armour Soap Works against the assessment of duty by the collector of customs at the port of Chicago. Opinions by Lunt, G. A.

Same as No. 14539 (*supra*).

No. 14542.—PROTEST UNSUPPORTED.—Protest 221768 of Gray Brothers. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). Opinion by De Vries, G. A.

Same as No. 14539 (*supra*).

No. 14543.—PROTEST UNSUPPORTED.—Protest 224278 of John E. Harris against the assessment of duty by the collector of customs at the port of Bangor. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent), February 19, 1907. Opinion by Hay, G. A.

Protest overruled for want of merit.

No. 14544.—PROTEST UNSUPPORTED.—Protest 223495 of A. Nielen & Co. against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 14543 (*supra*).

No. 14545.—SPLASH MATS.—Protest 206621 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 20, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of Woolworth *v.* United States (T. D. 27853), relating to splash mats.

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No. 14546.—Wood Dusters.—Protest 221678-23017 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 20, 1907. Opinion by McClelland, G. A.

The importers contended that the merchandise was improperly classified as brushes under paragraph 410, tariff act of 1897, and that it was dutiable as manufactured wood under paragraph 208. The sample of the importation was composed of a wooden handle about 18 inches long, to which were attached by strings small shavings of wood about 6 inches long of sufficient quantity to resemble a small feather duster. Protest sustained.

No. 14547.—Figured Cotton Cloth.—Protests 186676, etc., of Neuss, Hesslein & Co. *et al.* February 20, 1907.

Same as No. 14535 (*supra*).

No. 14548.—Protest Abandoned.—Protest 226015 of Henry W. Peabody & Co. February 20, 1907.

Same as No. 14538 (*supra*).

No. 14549.—Protest Abandoned.—Protest 225642 of Lehn & Fink. February 20, 1907. Opinion by McClelland, G. A.

Same as No. 14538 (*supra*).

No. 14550.—Protests Unsupported.—Protests 218898, etc., of Hensel, Bruckmann & Lorbacher and protest 225192 of Emil Levi. February 20, 1907. Opinions by Lunt, G. A.

Same as No. 14539 (*supra*).

No. 14551.—Protests Unsupported.—Protests 221717-23262, etc., of Edsin Keith & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Opinion by McClelland, G. A.

Same as No. 14539 (*supra*).

No. 14552.—Protests Unsupported.—Protests 179676, etc., of Yokohama Importing Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 20, 1907. Opinion by De Vries, G. A.

Protests overruled for want of merit.

No. 14553.—Protests Unsupported.—Protests 210923, etc., of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14552 (*supra*).

No. 14554.—Protest Unsupported.—Protest 213528 of Jno. C. Humes Crockery Company against the assessment of duty by the surveyor of customs at the port of Kansas City. February 20, 1907.

Same as No. 14543 (*supra*).

No. 14555.—Protest Insufficient.—Protest 194650 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers). February 21, 1907. Opinion by Fischer, G. A.

It appeared that the goods had been improperly classified, but as the importers failed to make the correct contention their protest was overruled.

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No. 14556.—STEEL DRILLS.—Protests 224908, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 21, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 13519 (T. D. 27729), relating to steel drills.

No. 14557.—TRIMMED HATS.—Protest 210115 of R. L. Cochran Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 21, 1907. Opinion by Howell, G. A.

Protests sustained on the authority of G. A. 5734 (T. D. 25440), relating to trimmed hats.

No. 14558.—HORSEHAIR GOODS.—Protests 84911*f*, etc., of Simpson, Crawford & Simpson against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 21, 1907. Opinion by Howell, G. A.

Protests sustained as to a portion of the merchandise on the authority of G. A. 5590 (T. D. 25022), relating to horsehair goods.

No. 14559.—WOOD PULP—SCREENINGS.—Protests 224888, etc., of Sault Ste. Marie Pulp and Paper Company against the assessment of duty by the collector of customs at the port of Marquette. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent), February 21, 1907. Opinion by Somerville, G. A.

The protests related to merchandise invoiced as ground wood screenings and classified as mechanically ground wood pulp under paragraph 393, tariff act of 1897. The importers contended that it should have been classified as an unenumerated unmanufactured article under section 6. The Board held that this contention was untenable, but, in view of the incompleteness of the record, refrained from deciding whether the classification was correct or whether the merchandise should have been classified as a manufacture of wood under paragraph 208 or as wood unmanufactured under paragraph 198.

No. 14560.—PROTESTS ABANDONED.—Protests 208462, etc., of Louis Metzger & Co. *et al.* and protests 48169*f*, etc., of Samstag & Hilder Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 21, 1907. Opinions by Howell, G. A.

Protests abandoned; overruled.

No. 14561.—PROTESTS UNSUPPORTED.—Protests 206930, etc., of H. Herrmann *et al.*, protests 216729, 216730, 216731, and 221133, etc., of G. A. & E. Meyer, protest 14286*h* of Estate of C. B. Rouss, protests 204593, etc., of Samuel Schiff & Co., and protest 36096*f* of Simpson, Crawford & Simpson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 21, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 14562.—PROTESTS UNSUPPORTED.—Protest 216367 of D. G. Gardiner, protest 220925 of Goldberg & Co., and protest 223721 of William Iselin & Co. Opinions by Fischer, G. A.

Same as No. 14561 (*supra*).

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No. 14563.—PROTESTS UNSUPPORTED.—Protests 223219, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Fischer, G. A.

Same as No. 14561 (*supra*).

No. 14564.—PROTEST UNSUPPORTED.—Protest 224276 of G. R. Schimmel against the assessment of duty by the collector of customs at the port of Detroit. Opinion by Fischer, G. A.

Same as No. 14561 (*supra*).

No. 14565.—PROTESTS UNSUPPORTED.—Protests 14650*h*, etc., of Geo. Riggs & Co. *et al.* and protest 226533 of G. W. Sheldon & Co. Opinions by De Vries, G. A.

Same as No. 14561 (*supra*).

No. 14566.—PROTEST UNSUPPORTED.—Protest 218587 of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Plattsburg. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Waite, G. A., absent).

Same as No. 14561 (*supra*).

No. 14567.—PROTEST UNSUPPORTED.—Protest 222177 of A. Cohn & Co. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by McClelland, G. A.

Same at No. 14561 (*supra*).

No. 14568.—PROTESTS UNSUPPORTED.—Protests 226728, etc., of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by McClelland, G. A.

Same as No. 14561 (*supra*).

No. 14569.—VERDIGRIS.—Protest 227253 of A. Klipstein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 25, 1907. Opinion by Lunt, G. A.

Klipstein *v.* United States (137 Fed. Rep., 1022, T. D. 26101, suit 3632) followed, relating to verdigris.

No. 14570.—ARTIFICIAL SILK YARN.—Protest 223692 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 25, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6378 (T. D. 27392) and G. A. 6459 (T. D. 27661), relating to artificial silk yarn.

No. 14571.—LACES.—Protests 225201, etc., of Felix J. McCosker against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 25, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6386 (T. D. 27441), relating to laces.

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No. 14572.—FEATHERSTITCH BRAIDS—ARTIFICIAL SILK INSERTINGS.—Protest 117937-18518 of Carson, Pirie, Scott & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 25, 1907. Opinion by Howell, G. A.

The Board held artificial silk insertings to be dutiable as silk inserting by similitude under paragraph 390, tariff act of 1897. Note G. A. 5310 (T. D. 24323). Also that featherstitch braids were properly classified as braids under paragraph 339, tariff act of 1897. Note G. A. 5744 (T. D. 25480).

No. 14573.—FEATHERSTITCH BRAIDS.—Protests 225508, etc., of J. M. Robinson, Norton & Co. against the assessment of duty by the surveyor of customs at the port of Louisville. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 25, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14574.—WOOD PULP—COUNTERVAILING DUTY.—Protest 210994 of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Malone. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 25, 1907. Opinion by Somerville, G. A.

Protests sustained in part on the authority of G. A. 5592 (T. D. 25035) and G. A. 6445 (T. D. 27629), relating to the assessment of countervailing duty on wood pulp.

No. 14575.—WOOD PULP—COUNTERVAILING DUTY.—Protests 197820, etc., of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Rouses Point.

Same as No 14574 (*supra*).

No. 14576.—DUTIABLE WEIGHT OF TOBACCO.—Protests 54989*f*, etc , of L. Newgrass & Co. *et al.* and protests 18538 *h*, etc., of A. Gonzales & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 25, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14577.—COAL DUST.—Protest 205116 of Vincent J. Thompson against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 25, 1907.

The protest related to so-called coal dust, which was classified under the provision in paragraph 183, tariff act of 1897, for metallic mineral substances in a crude state, and was claimed to be dutiable under paragraph 415, relating to coal slack or culm. Protest overruled.

HAY, *General Appraiser:* * * * It appears from the testimony that the commodity in question is the residuum or ash remaining after the roasting of a mineral substance in some respects resembling anthracite coal, taken from a mine in the Andes Mountains. The testimony shows that the purpose of roasting it was to get out of it the carbon and reduce its weight for transportation. From the testimony it is apparent that the purpose in bringing the commodity into the United States was for examination and experiment touching the quantity, character, and value of the mineral substances contained in it. The importer testified that the material, before it was roasted, was a slow-burning anthracite coal.

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A sample of the merchandise was analyzed by the chemist connected with the appraiser's office at the port of New York, and the same was found to contain carbon, silicious matter, vanadium, iron, manganese, sulphur, and traces of lead and arsenic. An analysis made by Andrew S. McCreath & Son, chemists, of Harrisburg, Pa., was also offered and received in evidence, which differs slightly from, but in a general way corroborates, the analysis made by the Government chemist.

The claim in the protest that the merchandise * * * should be assessed under paragraph 415 is in our judgment not supported by a preponderance of the testimony. Paragraph 415 provides for a duty upon coal and coke. There is no claim that this is coke, and, whatever the substance may have been before it was roasted, it is not coal now, nor was it brought into this country to be used in any such way as coal is used.

No. 14578.—PROTEST UNSUPPORTED.—Protest 226360 of I. A. Lahey & Sons. February 25, 1907.

Same as No. 14561 (*supra*).

No. 14579.—PROTEST UNSUPPORTED.—Protest 226710 of Hawley & Letzerich against the assessment of duty by the collector of customs at the port of Galveston. February 25, 1907.

Same as No. 14561 (*supra*).

TREASURY DEPARTMENT, *February 27, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 27946.)

Importations into Cuba.

GALBAN & CO. *v.* UNITED STATES. (*a*)

United States Court of Claims. October 30, 1905. No. 24207.

1. CUBA—FOREIGN COUNTRY.

Cuba was, as to the United States, a foreign country during the occupation of that island by American military forces, previous to the transfer of the island to Cuban government and control on May 20, 1902.

2. SAME—IMPORTATIONS FROM UNITED STATES.

Importations from the United States into Cuba during the American control of that island prior to May 20, 1902, were properly subjected to the duties levied by the American military authorities.

ON proceedings for the return of duties.

This case having been heard by the Court of Claims, the court upon the evidence makes the following findings of fact:

1. The claimant herein is a corporation duly organized under the laws of the State of New Jersey for the purpose of carrying on a general merchandise business in the island of Cuba; it has been carrying on such business at Sagua la Grande and other points in Cuba since March 1, 1899, and is now engaged there in such business.

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a 40 Ct. Cls. Rep., 495.

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2. For about three years prior to April 20, 1898, there was an insurrection in the island of Cuba against the Government of Spain, during which time the insurrectionists made determined efforts by force of arms to secure the freedom of the people of that island. On said date the Congress of the United States adopted a joint resolution for the recognition of the independence of the people of the island and demanding that the Government of Spain relinquish its authority and government over said island, copy of which resolution is made a part of the petition herein.

3. Following the adoption of the resolutions referred to, the United States waged war with Spain for the purposes aforesaid until August 12, 1898, when a protocol of an agreement embodying the basis for the establishment of peace between the two countries was entered into, after which hostilities between the two countries were suspended until the final treaty of peace was concluded at Paris December 10, 1898, the ratifications of which were exchanged in the city of Washington December 11, 1898, and the treaty proclaimed by the President on the same day, a copy of which treaty is set forth in the petition and made part thereof.

4. On December 13, 1898, the United States, pursuant to the terms of the treaty, entered into the occupancy of the island of Cuba, on which day, by military order, the Division of Cuba was created, consisting of the geographical departments and provinces of the island, with headquarters in the city of Havana. The division so created was placed under the command of Maj. Gen. John R. Brooke, U. S. Army, who was also directed by the President to exercise the authority of military governor of the island, after which the United States, through the military forces, as aforesaid, and during the entire period of their occupation of the island, performed the duties and obligations devolving upon them under the treaty and under international law. Laws were established by military orders, instructions, regulations, commands, and decrees; the Government was divided into various departments, each with a secretary; officers were appointed who discharged their official duties; courts of justice were established and maintained; taxes, customs duties, and internal-revenue taxes were levied and collected, and such other duties and public functions were performed as were necessary for the purposes of the occupation, all of which were done by command of the military governor under the direction of the President of the United States until May 20, 1902, when, by direction of the President, the military governor was directed to transfer to the President and Congress of the Republic of Cuba the government and control of the island, as set forth in the letter of the President of the United States addressed to the President and Congress of the Republic of Cuba under date of May 10, 1902, and the letter of the military governor addressed to the same under date of May 20, 1902, both set forth and made a part of the petition herein.

5. During the occupation of Cuba by the military forces of the United States, to wit, on March 31, 1900, the President, as Commander in Chief of the Army and Navy of the United States, ordered and directed the levy and collection of certain tariff and duties in all ports and places in the island of Cuba, which order is as follows:

EXECUTIVE MANSION, *March 31, 1900.*

By virtue of the authority vested in me as Commander in Chief of the Army and Navy of the United States of America, I do hereby order and direct that the following tariff and duties shall be levied and collected in all ports and places in the island of Cuba and all islands in the West Indies west of the seventy-fourth degree west longitude, evacuated by Spain, on and after June 15, 1900, and shall remain in force one year from the date of promulgation without change.

All questions arising in the administration of the customs regulations shall be referred to the collector at the port of Habana for decision, and there shall be no appeal from such decision except in cases where the collector may find it expedient to ask for special instructions of the War Department on the points involved.

Importers who are dissatisfied with the valuation or classification of merchandise as fixed by the collector of the port shall pay the duties imposed, but may file at the time of payment a written protest and appeal stating briefly the value or classification which it is claimed should have been established.

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Said protest and appeal shall forthwith be transmitted by the collector, through the chief of customs service, to the military governor of the island, who will review, and either affirm, reverse, or modify the action complained of.

Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

WILLIAM MCKINLEY.

Under and pursuant to the order aforesaid, impost duties were collected on goods imported into the various ports of said island from the United States, including the duties collected on goods imported by the claimant herein from the United States to the port of Sagua la Grande, amounting in the aggregate to $51,104.20, no portion of which has been repaid or refunded to the claimant. No objection or protest was made by the claimant to the collection of said duties or any part thereof.

The various communications, orders, resolutions, and regulations referring to and authorizing the government and control of the island by the military forces of the United States are set forth in the petition and made a part thereof, to which reference is hereby made as fully as if set forth herein; and the facts set forth in said petition, so far as they are facts, are hereby adopted as facts in the case

L. T. Michener and *Barry Mohun*, for the claimants.

Louis A. Pradt, assistant United States attorney-general, for the United States.

PEELLE, *J.*, delivered the opinion of the court:

This action is for the refund of impost duties collected in the ports of Cuba during the occupation of that island by the military forces of the United States on goods imported thereto from the United States by a citizen of the United States after the treaty of Paris.

By the reason of the failure or inability of the Spanish Government for a number of years to subdue and pacify the insurrectionists in the island of Cuba, and to protect the property of American citizens therein, the peace and commerce of the United States became endangered. As the conflict ensued it became more evident that some decisive action would have to be taken by the United States, of a self-defensive character, looking to the liberation of the Cuban people from the rule of the Spanish Government. With that purpose in view the Congress passed the following joint resolution, approved April 20, 1898 (30 Stat., 738):

Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of the United States battleship, with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Havana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, First, That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

Approved, April 20, 1898.

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The next day (April 21) war began between the United States and the Kingdom of Spain, as declared by the Congress in the act of April 25, 1898 (30 Stat., 364). And the following day (April 22) the President, on the authority of said joint resolution, deeming "it necessary to set on foot and maintain a blockade on the north coast of Cuba," issued his proclamation therefor (30 Stat., 1769), and such blockade was established and effectively maintained and war was prosecuted between the belligerent governments until a protocol for the establishment of peace was signed by their respective representatives at the city of Washington August 12, 1898 (30 Stat., 1742), after which hostilities were suspended and so continued until the final terms of peace were agreed upon by the treaty of Paris of December 10, 1898, the ratifications of which were exchanged in the city of Washington on the 11th day of April, 1899, and the treaty proclaimed by the President on the same day (30 Stat., 1754).

By Article I it was provided:

> Spain relinquishes all claim of sovereignty over and title to Cuba.
>
> And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

The obligations assumed by the United States in respect to Cuba were by Article XVI of the treaty limited "to the time of its occupation thereof."

It will thus be observed that by the terms of the treaty, as well as in conformity with the resolutions aforesaid, Spain relinquished "all claim of sovereignty over and title to Cuba," and that upon the occupation thereof by the United States they assumed, during such occupancy, the obligations resulting therefrom "under international law" for the protection of life and property.

International law is a system of rules founded upon long-established customs and acts of States and international agreements, not inconsistent with the principles of natural justice, which Christian and civilized States recognize as obligatory in their relations and dealings with each other, as well as with the citizens and subjects of each.

That the United States had the right to intervene to stop the effusion of blood and to protect the peace and commerce of the United States, as well as the lives and property of their own citizens in Cuba, has passed beyond the domain of forensic debate, as well as beyond judicial inquiry, and has become, if it was not before, a rule of international law.

The United States intervened, and did so through the President by authority of the resolutions, which were in substance and effect embodied in the treaty, the result of all which was the occupation of Cuba by the military forces of the United States.

In the case of Neely *v.* Henkel (180 U. S., 109, 117) the objects of that occupation are shown by reference to a proclamation issued by the military governor and major-general commanding the Division of Cuba to be "to give protection to the people, security to persons and property, to restore confidence, to encourage the people to resume the pursuits of peace, to build up waste plantations, to resume commercial traffic, and to afford full protection in the exercise of all civil and religious rights."

In furtherance of those objects and by authority of the President, the military governor, by order, established various civil departments, each under the charge of a secretary; and later, by separate orders, created a supreme court, with jurisdiction throughout the island, and defined the jurisdiction of the ordinary criminal courts.

In speaking of the relation of Cuba to the United States and the character of its occupation thereby, the court, in the case of Neely *v.* Henkel (*supra*), page 120, says:

> Cuba is none the less foreign territory within the meaning of the act of Congress, because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own

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affairs without interference by other nations The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba.

It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the treaty of Paris was to be treated as if it were conquered territory. But, as between the United States and Cuba, that island is territory held in trust for the inhabitants of Cuba, to whom it rightfully belongs and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action.

Therefore it has been judicially determined, first, that Cuba was during the occupation thereof by the military forces of the United States foreign territory, and, second, that as between the United States and Cuba the island was held in trust "for the inhabitants of Cuba," to whom the island, says the court, "rightfully belongs."

This being so, we might stop here, as the theory of the claimant is that when the Kingdom of Spain relinquished all sovereignty over and title to Cuba they at once vested in the United States, all else having been taken by force of arms; and that as Cuba thereby became territory of the United States the decisions of the Supreme Court in the cases of De Lima *v.* Bidwell and Dooley *v.* United States (182 U. S., 1, 222) are controlling. But the theory that sovereignty over and title to Cuba vested in the United States upon the relinquishment thereof by Spain is negatived by the language of the treaty which follows the words of the relinquishment—i. e.:

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

In the present case, as the United States expressly disclaimed any intention to exercise sovereignty, jurisdiction, or control over the island "except for the pacification thereof," the ownership of the island, upon the relinquishment by Spain of her sovereignty over it, immediately passed to the inhabitants of Cuba, who, in the resolutions referred to, were declared to be free and independent, and in whom, therefore, abstractly considered, sovereignty resided.

Had the language been "Spain cedes to the United States the island of Cuba," as by Article II she did Porto Rico, that would have divested her of all title to and, by consequence, all sovereignty over Cuba, both of which would then immediately have passed to the United States, as they did in the case of Porto Rico; subject, however, to the rights of the people. True, when, pursuant to the treaty, the United States occupied the island, the inhabitants thereof during such occupancy undoubtedly owed allegiance to the United States—i. e., fidelity and obedience for the protection they received, but that did not divest them of their inherent rights.

The President, as Commander in Chief of the Army and Navy, had the undoubted right to prescribe rules and regulations having the force of law for the peaceable government of the island during the occupation by the military forces, but he had no authority to extend the Union so as to embrace within it territory acquired either by treaty or conquest without authority from the legislative branch of the Government. Fleming *et al. v.* Page (9 How., 603).

In that case the United States, by the President as military commander, pursuant to authority of Congress, during the war with Mexico conquered, took possession of, and held the port of Tampico, but the Supreme Court held that such territory did not thereby become a part of the Union, but remained a foreign port, and the duties collected upon goods imported therefrom into the United States were properly levied, and hence no recovery could be had for a refund of the duties so collected. That case comes near being analogous to the present case.

During the occupation the people of the island were for a brief time, and while in preparation therefor, denied the right of self-government, but when the people had by

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their "voluntary action" organized a "stable government" the United States withdrew and left "the government and control of the island to its people," the rightful owners. The territory being foreign, and occupied for a specific purpose, the United States could exercise no right of ownership, jurisdiction, sovereignty, or control which would operate to make the island territory of the United States. To have done so would have been a violation of their trust and an act of bad faith toward the Cuban people. The powers and functions which were exercised by the United States were strictly in line with their duties as a trustee for the protection and security of persons and property, having in view the restoration of confidence and the encouragement of the people to resume the pursuits of peace. In furtherance of that trust it became, among other things, necessary, and there were collected from May 30, 1900, to April 29, 1902, at Sagua la Grande, Cuba, as set forth in the findings, duties aggregating $51,104.20 on goods and merchandise imported thereto from the United States by the claimant corporation, a citizen of the United States.

The levy and collection of taxes for the support of government may in a sense be said to be the precursors of civilization, as they are the essential and material forces for the establishment of that social order from which man's improved condition results, and without which the trustee in this case would have been hindered, if not prevented, from executing its trust. That the trust might be effectively and in good faith carried out, the President, as Commander in Chief of the Army and Navy of the United States, issued the order of March 31, 1900, set forth in the findings, directing that after June 15, 1900, there be levied and collected, under the supervision of the War Department, such tariff and duties as might be necessary for the purpose of the occupation. The order was issued by the President as Commander in Chief of the Army and Navy of the United States, and was therefore a war measure to enable them to discharge the functions and obligations which, by virtue of the treaty and the vicissitudes of war, devolved upon them.

It was a trust of the most solemn and sacred character, undertaken for the liberation of a people struggling for self-government and having for its object the establishment of a republic founded upon the consent of the governed.

Such being the case, should the merchandise of a citizen of the United States imported into Cuba from the United States have been exempted from the payment of such duties because the United States were, for the pacification thereof, exercising the functions of government over the island?

To have done so would have been an act of bad faith toward the people of Cuba, as they were entitled not only to have the revenues honestly collected, but were entitled to have all the revenues accruing to the island, from whatever source, applied to the pacific object of the occupation.

The duties of an ordinary trustee are to render to his *cestui que trust* an accurate account of his doings, showing receipts and disbursements made by him, including all money which he might with diligence have received; and any loss occurring through his negligence he must make good. While that rule may not in strictness be applicable to the United States in the exercise of governmental functions as a trustee over the island, still in the forum of public conscience, as well as under the test of those rules of international law to which I have referred, the United States would be held responsible for an honest and accurate account of their doings. That account they rendered, and on May 20, 1902, transferred to the duly elected representatives of the people in the Congress of the Republic the government and control of the island. No protest was made by the Republic of Cuba to the manner in which the United States had governed the island, nor did the claimant, either at the time of the collection of the impost duties which he seeks to have refunded or at any subsequent time until the bringing of this action, object to or protest against the collection thereof. What was done by the United States was lawfully done, and hence no right can be founded thereon in the claimant's favor for the recovery of the duties so collected, and his petition is dismissed.

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(T. D. 27947.)

Smuggling.

BASSO *v.* UNITED STATES. (*a*)

United States Court of Claims. February 6, 1905. No. 23186.

1. SMUGGLING FROM UNITED STATES TO PORTO RICO.

It was not a crime under the laws of the United States to smuggle goods into Porto Rico from the United States, after that island had passed into American control, and when such goods would have been nondutiable if imported regularly.

2. PENALTIES—VOID JUDGMENT—RECOVERY.

No greater right exists to collect a penalty for the nonpayment of a customs duty than for the payment of the duty itself; and money paid under the compulsion of a void judgment may be recovered, as where a fine is imposed for smuggling merchandise in a case to which the smuggling laws do not apply.

ON proceedings for the recovery of a fine paid under a judgment.

The following are the facts of the case as found by the court:

1. The claimant above named, Narciso Basso, is a native inhabitant of the island of Porto Rico, and at all the times referred to in the petition resided and now resides in the town of Humacao, in said island.

2. On the 10th day of December, 1898, a treaty of peace between the United States of America and the Kingdom of Spain was concluded and signed by their respective plenipotentiaries at Paris, and in the French Republic. Said treaty was ratified by the Senate and by the President of the United States on the 6th day of February, 1899, and by Her Majesty the Queen Regent of Spain on the 19th day of March, 1899, and ratifications thereof were exchanged in the city of Washington, in the District of Columbia, on the 11th day of April, 1899, and on the same day the said treaty was proclaimed by the President of the United States.

3. The said island of Porto Rico was occupied by the military forces of the United States prior to the 1st day of January, 1899, and on the 1st day of February, 1899, the President of the United States, by a certain Executive order, promulgated the "amended customs tariff and regulations for ports in Porto Rico," as a tariff fixing and providing for the collection of duties upon all articles imported into Porto Rico, and thereafter duties were collected under and pursuant to said "amended customs tariff and regulations," and the amendments thereof made from time to time by order of the President until the 1st day of May, 1900.

4. During the said period from the 1st of February, 1899, to the 1st day of May, 1900, certain officers of the Army of the United States were designated to act, and did act, as collectors of customs at the several ports of entry in Porto Rico, and enforced the said "amended customs tariff and regulations" at all times during said period upon articles of merchandise imported into Porto Rico from the United States, as well as upon similar articles imported into Porto Rico from foreign countries.

5. During the months of July and August, 1899, George W. Davis, brigadier-general of volunteers, pursuant to orders duly issued by his military superiors, was in command of the department of Porto Rico, and on the 27th day of June, 1899, he issued and promulgated a general order, known as "General Orders, No. 88," whereby he established a provisional court for the department of Porto Rico. In and by the said order it was provided, among other things, that the judicial power of said provisional court should extend to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution and to all common-law offenses within the restrictions thereinafter specified; that the decisions of said court should follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules, and records should conform as nearly as practicable to those observed and kept in said Federal courts; that said court should

a 40 Ct. Cls. Rep., 202.

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consist of three judges, one United States district attorney, one marshal, one clerk, three deputy clerks, one stenographer and reporter, one interpreter, one bailiff, one janitor, and one messenger; that the law judge should preside and determine and decide all technical questions of law, and that a majority vote of the bench should determine all questions of fact, and that the jury system might be introduced or dispensed with in any particular case in the discretion of the court, and that the judges of the provisional court should be clothed with the powers vested in the judges of circuit or district courts of the United States, and that the district attorney should be authorized to present to the court information against all parties for violations of the United States statutes and regulations. With relation to the criminal jurisdiction of said court, it was further ordered in said order as follows:

In order to define more closely certain branches of the criminal jurisdiction of the provisional court, it is hereby provided that it shall include and be exclusive in the following classes of cases:

First. All offenses punishable under the statutory laws of the United States such as those indicated in Paragraph I of this order.

The provisions in said order relative to appeals and writs of error are as follows:

If any party litigant shall feel aggrieved by the judgment or decree of said court, a stay of ninety days shall be granted to such party before the execution of such judgment or decree, upon the filing of a bond by him, with sureties in an amount and with such conditions as the court may determine, for the purpose of allowing such party to make application to the Supreme Court of the United States for a writ of certiorari or other suitable process to review such judgment or decree. But if, at the end of said ninety days, such process has not been issued by the Supreme Court, execution shall forthwith issue.

And it is further provided in said order as follows:

The department commander will exercise the power of pardon, commutation, or mitigation of punishment in criminal cases.

All fees, fines, and costs paid to the clerk of the provisional court shall be turned over by him at the end of each calendar month to the treasurer of the island, with a statement of the sources from which they are received.

Under the said order the following appointments were announced, which took effect July 1, 1899:

To be law judge, Noah Brooks Kent Pettingill.

To be provisional United States attorney, J. Marbourg Keedy.

The following officers are hereby detailed on the special duty set opposite their respective names:

Maj. Eugene D. Dimmick, Fifth U. S. Cavalry; Maj. Earl D. Thomas, Fifth U. S. Cavalry, associate judges of the United States provisional court.

First Lieut. Robert Alexander, Eleventh U. S. Infantry, clerk of the United States provisional court.

Private Samuel C. Bothwell, Troop D, Fifth U. S. Cavalry, is detailed on special duty as marshal of the United States provisional court.

The necessary deputies will be detailed in subsequent orders.

The officers named will proceed to San Juan and report to the adjutant-general of the department.

The travel enjoined is necessary for the public service.

The provisional court, as stated by said General Orders, No. 88, was organized as thereby provided.

6. On the 13th day of July, 1899, an information was filed by the said attorney for the provisional court, charging the claimant with the crime of having smuggled certain articles, to wit, certain scissors, from the United States into the port of Humacao, P. R., on the 29th day of April, 1899, on the schooner *Jennie A. Stubbs;* with having failed to make the entry of the same in the custom-house at Humacao, P. R., and of having illegally imported into the island of Porto Rico from the United States said goods without having paid the duty thereon, in violation of sections 2865 and 3082 of the Revised Statutes of the United States. The claimant was arraigned in said provisional court on said charge on the 14th day of July, 1899, when he entered an appearance by counsel and pleaded not guilty. Trial was then set down for July 18, 1899,

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on which day claimant appeared by counsel and testified as a witness in his own behalf, and by said counsel entered a plea that said sections 2865 and 3082 of the Revised Statutes of the United States were without force and effect in Porto Rico on said date, to wit, the 29th day of April, 1899. The said defenses were not allowed, and the court thereupon found the claimant guilty and fined him $1,500, lawful money of the United States, and also sentenced him to be confined to the "Carcel real" for the period of one month. The said scissors were of domestic manufacture.

7. The said "Carcel real" was at the time in question used as the jail in which prisoners sentenced by said provisional court were confined.

8. On the 19th day of July, 1899, the claimant paid to said Robert Alexander, clerk of said provisional court, the sum of $1,500 lawful money of the United States, the amount of said fine so imposed on him.

9. Said payment of said fine was made under compulsion.

10. The amount of said fine, shortly after its receipt, was paid over by said clerk of said court to the treasurer of the island of Porto Rico, in conformity with the requirements of said General Orders, No. 88.

11. At the date of said payment to said treasurer he, the said treasurer, was an officer of the United States Army, detailed to act as treasurer of the island of Porto Rico by orders of his military superiors.

Henry M. Ward, for the claimant.

Felix Brannigan, assistant attorney for the United States, and *Louis A. Pradt*, assistant United States attorney-general, for the United States.

WRIGHT, *J.*, delivered the opinion of the court:

During the war with Spain and before April 11, 1899, the date of the exchange of ratifications of the treaty of peace, the island of Porto Rico was occupied by the military authorities of the United States, and among other regulations for the government of the island during said military occupation the War Department prescribed the collection of duties on all articles imported into Porto Rico. Officers of the Army were designated to act and did act as collectors of customs of the several ports, and enforced the collections of such customs tariff.

On the 27th day of June, 1899, by authority of the War Department, a provisional court for the department of Porto Rico was established, upon which judicial power was conferred extending to all cases which would be properly cognizable by the circuit or district courts of the United States under the Constitution and all common-law offenses within certain restrictions; that the decisions of said court should follow the principles of common law and equity as established by the courts of the United States, and its procedure, rules, and records should conform as nearly as practicable to those observed and kept in Federal courts; that the judges of the provisional court be vested with the powers of judges of circuit or district courts of the United States; a district attorney should be appointed, authorized to present to the court informations against all parties for violations of United States statutes and regulations. With relation to the criminal jurisdiction of the provisional court it was specially ordered that it include all offenses punishable under the statutory laws of the United States.

An information was filed in the provisional court July 13, 1899, against the plaintiff, charging him with the misdemeanor of having smuggled scissors from the United States into the port of Humacao, P. R., on the 29th day of April, 1899, on the schooner *Stubbs;* with having failed to make entry of the same in the custom-house at said port, and with having illegally imported into Porto Rico from the United States the said goods without having paid the duty thereon, in violation of sections 2865 and 3082 of the Revised Statutes of the United States. The plaintiff was arraigned in said provisional court upon the information filed against him, and pleaded not guilty, and as a defense insisted that the said sections of the Revised Statutes of the United States were without force or effect in Porto Rico on the 29th day of April,

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1899. But the court overruled the defense, and adjudged plaintiff guilty of a violation of the statute and gave judgment against him for a fine of $1,500 and imprisonment for one month. The fine was paid and the imprisonment endured.

The plaintiff is a native inhabitant of Porto Rico, and at all times referred to in his petition herein resided and now resides in the town of Humacao, in said island. He brings this suit to recover back the penalty imposed upon him for the alleged violation of the statute referred to.

The chief defense of the Government against a right to recover, urged upon our attention, is the incapacity of the plaintiff to maintain the suit in this court. Plaintiff is a citizen of Porto Rico. He is not an alien to the United States. Gonzales *v.* Williams (192 U. S., 1). We discover no prohibition contained in section 1068 of the Revised Statutes to his right to maintain this suit. No other statute has been cited to us, and we know of none to deny plaintiff such right. We think his right to sue in this court is clear.

The War Department, by its order or regulation, gave to the provisional court of Porto Rico as the limit of its criminal jurisdiction the statutes of the United States. The court could not itself create new offenses, but could recognize and punish only such as had been defined and declared by the statutes. In giving the court the statutes for its guide relative to criminal jurisdiction it will be presumed the War Department intended the statutes to be accepted and applied as interpreted by the court of final resort in the United States, so that the statutes could not mean one thing here and something else in Porto Rico. In Dooley *v.* United States (182 U. S., 235) the court said:

> Without questioning at all the original validity of the order imposing duties upon goods imported into Porto Rico from foreign countries, we think the proper construction of that order is that it ceased to apply to goods imported from the United States from the moment the United States ceased to be a foreign country with respect to Porto Rico, and that, until Congress otherwise constitutionally directed, such merchandise was entitled to free entry.

The case then frees itself to the single point that at the time of the alleged violation of the statute in question, April 29, 1899, the scissors which plaintiff was charged with smuggling were entitled to free entry, and the regulation of the War Department in respect to the collection of customs tariff did not apply to such merchandise. At the time of the alleged offense and at the time of plaintiff's conviction there was in fact no criminal offense of the kind with which plaintiff was charged and convicted. The statutes limiting and defining the criminal jurisdiction of the provisional court did not extend to or create the offense with which plaintiff was charged and convicted, and for which a penalty was imposed upon him for the omission to do that which he was not obligated to do either by the statute referred to in the complaint or by the regulation of the War Department. The subject-matter of its judgment never having been confided to it, the court was without jurisdiction and its judgment was void. The jurisdiction of a court can never depend upon its own decision upon the merits of a case brought before it, but upon its right to hear and decide it at all. *Ex parte* Watkins (7 Pet., 568). If there is a total want of jurisdiction the proceedings are void and afford no justification, and may be rejected when collaterally drawn in question. Thompson *v.* Tolmie (2 Pet., 157); Rose *v.* Himely (4 Cranch, 241); Griffith *v.* Frazier (8 Cranch, 9). Although a court may have jurisdiction over the parties and subject-matter, yet if it make a decree which is not within the powers granted to it by the law of its organization, its decree is void. United States *v.* Walker (109 U. S., 258). Where a court is without jurisdiction it can not make any order in the cause, except to dismiss the suit, but may set aside orders made before the want of jurisdiction was discovered. New Orleans and B. S. Mail Company *v.* Fernandez (12 Wall., 130). Courts of the United States have no jurisdiction over offenses not made punishable by the Constitution, laws, or treaties of the United States (148 U. S., 197), and the criminal jurisdiction of their courts is wholly derived from statutes of the United States. Manchester *v.* Massachusetts (139 U. S., 240).

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Treating the judgment of the provisional court as void, as it must be, the fact results that the penalty of $1,500 exacted was without legal warrant. No greater right existed to demand a penalty for the nonpayment of a customs duty than for the payment of the duty itself. There was no authority of law to demand the one or the other. The defendant received and still retains it. Is there any reason it should not be refunded to plaintiff? There is none in legal contemplation nor in good morals. In Wisconsin Central Railroad *v.* United States (164 U. S., 212) the court said:

Reference was made to Barnes *v.* District of Columbia (22 Ct. Cls. Reps., 366, 394), wherein it was ruled, Richardson, *C. J.*, delivering the opinion, that "the doctrine that money paid can be recovered back when paid in mistake of fact and not of law does not have so general application to public officers using the funds of the people as to individuals dealing with their own money where nobody but themselves suffer for their ignorance, carelessness, or indiscretion, because in the former case the elements of agency and the authority and duty of officers and their obligations to the public, of which all persons dealing with them are bound to take notice, are always involved." We concur in these views, and are of opinion that there is nothing on this record to take the case out of the scope of the principle that parties receiving moneys illegally paid by a public officer are liable *ex aequo et bono* to refund them.

These principles are as forceful in the present case of moneys illegally exacted by public officers as when illegally paid by them, to which they have been applied in the case cited.

In United States *v.* State Bank (96 U. S., 35) the court said:

A party who without right and with guilty knowledge obtains money of the United States from a disbursing officer becomes indebted to the United States, and they may recover the amount. An action will lie whenever the defendant has received money which is the property of the plaintiff, and which the defendant is obliged by natural justice and equity to refund. The form of the indebtedness or the mode in which it was incurred is immaterial. Bayne *v.* United States (93 U. S., 642). * * *

But surely it ought to require neither argument nor authority to support the proposition that, where the money or property of an innocent person has gone into the coffers of the Nation by means of a fraud to which its agent was a party, such money or property can not be held by the United States against the claim of the wronged and injured party.

No implication should be indulged from the use of the quotations we have given that we believe any element of fraud entered into the acts of the members of the provisional court, for we have no doubt they were controlled by pure and honorable intentions, but the result of their unauthorized proceeding was as illegally destructive of the rights of plantiff as in the case described in the quotations.

It is suggested this court has no jurisdiction of the cause because the action is for damages sounding in tort. This same point was before the court and received its judgment in the Dooley case (*supra*), in which it was said:

But whether the exactions of these duties were tortious or not; whether it was within the power of the importer to waive the tort and bring suit in the Court of Claims for money had and received, or upon an implied contract of the United States to refund the money in case it was illegally exacted, we think the case is one within the first class of cases specified in the Tucker act of claims founded upon a law of Congress, namely, a revenue law, in respect to which class of cases the jurisdiction of the Court of Claims, under the Tucker act, has been repeatedly sustained.

Whether the present case be regarded as founded upon a law of Congress or upon a regulation of an Executive Department is immaterial, as the result is the same in either case, for according to the decision in the Dooley case both classes are put upon the same footing with respect to tortious characteristics and the jurisdiction of the court established. In that case the court analyzed the jurisdiction of this court as conferred by the Tucker act in this manner:

The first section evidently contemplates four distinct classes of cases: (1) Those founded upon the Constitution or any law of Congress, with an exception of pension cases; (2) cases founded upon a regulation of an Executive Department; (3) cases of contract, express or implied, with the Government; (4) actions for damages, liquidated or unliquidated, in cases *not sounding in tort*. The words "not sounding in tort" are in terms referable only to the fourth class of cases.

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The present case is not for damages, liquidated or unliquidated, and the question of whether the exaction of the penalty was tortious or not is not involved in the case.

It should not be the province of the court to hunt for doubts of jurisdiction in a case like this, where all the demands of justice point to the right of plaintiff to be reimbursed the penalty unlawfully exacted. Judgment will be awarded against defendants for $1,500.

(T. D. 27948.)

Statuary.

RICHARD *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 17, 1907. Suit 4267.

BRONZE STATUARY—RECIPROCAL AGREEMENTS.

The provision for "statuary" in section 3, tariff act of 1897, and in the reciprocal commercial agreements negotiated under said section, is subject to paragraph 454 of said act, prescribing that "the term 'statuary' as used in this Act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal." Bronze statuary, not being within this definition, is not subject to the reciprocal commercial agreement with Italy (31 Stat., 1979; T. D. 22373).

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as Abstract 11373 (T. D. 27363), affirmed the assessment of duty by the collector of customs at the port of New York on an importation by C. B. Richard & Co. The opinion filed by the Board reads as follows:

WAITE, *General Appraiser:* The merchandise consists of certain bronze statuary, assessed for duty at 45 per cent ad valorem under paragraph 193, tariff act of 1897, and claimed to be dutiable at 15 per cent ad valorem under paragraph 454 and the reciprocity agreement with Italy (T. D. 22373). There is nothing in the evidence supplied by the affidavit filed by the importers to show that the goods differ from the ordinary cast bronze statuary which the courts and the Board have repeatedly held is not within the purview of said paragraph 454. Tiffany *v.* United States (71 Fed. Rep., 691); *In re* Perkins, G. A. 5213 (T. D. 24016).

The protest is overruled and the collector's decision affirmed.

The pertinent portion of said paragraph 454 reads as follows:

Statuary, not specially provided for in this Act, twenty per centum ad valorem: but the term "statuary," as used in this Act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The subject of this protest is an art object brought from Italy and belonging to the class of metal statuary ruled upon in Tiffany *v.* United States (71 Fed. Rep., 691). In the ordinary acceptation of the word, it is "statuary," but that word is given by paragraph 454 of the tariff act of 1897 a specific and peculiar definition, to be construed in accordance with the Tiffany case (*supra*).

The protesting importer contends that the commercial agreement between the United States and Italy (31 Stat., 1979; T. D. 22373), made pursuant to "the provisions of the third section of the tariff act" (of 1897), has so changed the statutory definition of the word "statuary" as to admit the article under consideration at the reduced rate of duty therein provided for.

It was remarked in United States *v.* Wile (130 Fed. Rep., 331; T. D. 25223) that a "commercial agreement can not legally extend the scope of section 3 of the tariff act" (of 1897). The agreement there considered was with France, but the Italian agreement is entirely similar; and it can not change the definition of "statuary" contained in paragraph 454, nor does it purport so to do.

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In the Wile case (*supra*), the court found two categories to which the article under consideration could be referred, one general and one specific. The agreement with France modified the duty upon all articles in the general category, and that necessarily contained and controlled the more specific description. Such is not the case here. Statuary is mentioned in and defined by paragraph 454 only, and the word must mean the same thing in section 3 as it does in paragraph 454 of the same statute; and such signification is not and can not be varied by the commercial agreement above referred to

The decision of the Board of Appraisers is affirmed.

(T. D. 27949.)

Needlecases.

DIECKERHOFF *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 19, 1907. Suit 4152.

NEEDLECASES—ARTICLES COMPOSED CHIEFLY OF NEEDLES—"MATERIAL."

As to needlecases in the form of dutiable entiretics, which are composed of steel needles and paper, needles being the more valuable, *Held* that needles rather than steel should be considered the material determining their classification; and that therefore they are not dutiable as articles composed in part of steel under paragraph 193, tariff act of 1897, but, there being no provision for goods composed chiefly of needles, are dutiable as unenumerated manufactured articles under section 6.

ON application for review of a decision of the Board of United States General Appraisers.

The decision below, which is reported as G. A. 6220 (T. D. 26887), affirmed the assessment of duty by the collector of customs at the port of New York on goods imported by Dieckerhoff, Raffloer & Co. Note United States *v.* Mathews (78 Fed. Rep., 345) and Guthman *v.* United States (148 Fed. Rep., 332; T. D. 27501).

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The imported object is a needlecase of ornamented paper furnished with needles, and seems to be identical with the article considered in Wanamaker *v.* Cooper (69 Fed. Rep., 465). In consonance with that decision, the importer admits that, although needles are free under the tariff act of 1897 (par. 620), the needlecase with its contents is to be regarded as an entirety and is assessable as a whole. It has been assessed under paragraph 193 as an article not specially provided for, and composed in part of steel—i. e., needles. Wanamaker *v.* Cooper (*supra*) arose under the tariff act of October 1, 1890, which contains substantially the same proviso as paragraph 193 of the present statute (par. 215, 26 Stat., 582); but the report of that decision does not show under what paragraph or schedule of the act the assessment upon needlecases was made.

It appears to me that the reasoning of Hartranft *v.* Sheppard (125 U. S., 337) is conclusive in the present case. The act of March 3, 1883 (22 Stat., 488), was there under consideration; and that statute also contained provisos as all-embracing as any found in the present statute; and, to paraphrase the conclusion of the court in that case, I am of opinion that, as needles are the component material of chief value in the needlecases involved in this suit and as needles are free, it follows that the needlecases with their contents are manufactured articles not provided for, and therefore chargeable with the duty of 20 per cent ad valorem under section 6 of the tariff act of 1897.

Paragraph 193 I think wholly inapplicable, because the metal of the needles entering into the composition of the needlecases is immaterial. These needles happen to be

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made of steel; they might just as well be of any other metal or substance not depriving them of the name "needles, hand-sewing, and darning." It is *as needles* that they (with paper envelopes) comprise the raw material for the needlecases at bar; and the sole question for consideration is what is the proper tariff upon an article composed of needles and paper. Inquiry as to the tariff position of an article of steel and paper is inappropriate.

The decision of the Board of General Appraisers is reversed and judgment directed in accordance with the above opinion.

(T. D. 27950.)

Drawback on casket and coffin hardware.

Drawback on casket and coffin hardware, consisting of extension handles, short bar handles, cover lifters, thumbscrews, escutcheons, and ornaments, manufactured by the National Casket Company, of New York City (Allegheny works), wholly or in part with the use of imported lead, antimony, and tin plate.—T. D. 24573 of July 18, 1903, revoked.

TREASURY DEPARTMENT, *February 27, 1907.*

SIR: On the exportation of casket and coffin hardware consisting of extension handles, short bar handles, cover lifters, thumbscrews, escutcheons, and ornaments, manufactured by the National Casket Company, of New York City (Allegheny works), wholly or in part with the use of imported lead, antimony, and tin plate, a drawback will be allowed equal in amount to the duties paid on the materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the contents of each package, and the gross and net weight thereof and of the entire shipment.

The drawback entry must show the total number of each kind of article exported and the net weight of each kind of imported material contained therein; and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 6, 1907, transmitted herewith for filing in your office.

In liquidation, the quantities of lead, antimony, and tin plate which may be taken as the bases for the allowance of drawback may equal the quantities declared in the drawback entry, after official verification of exported quantities, provided that in no case shall they exceed the quantities shown in the manufacturers' sworn statement, with 1 per cent of each added thereto as compensation for the loss in the manufacture.

Department's regulations of July 18, 1903 (T. D. 24573), are hereby revoked.

Respectfully, JAMES B. REYNOLDS,
(6304.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27951.)

Drawback on continuous rail joints.

Drawback on continuous rail joints manufactured for account of L. F. Braine, of New York City, wholly with the use of imported steel billets.—T. D. 23809 of June 20, 1902, extended.

TREASURY DEPARTMENT, *February 28, 1907.*

SIR: The Department's regulations of June 20, 1902 (T. D. 23809), providing for the allowance of drawback on continuous rail joints manufactured for account of the Continuous Rail Joint Company of America wholly with the use of imported steel billets, are hereby extended to cover the same merchandise manufactured for and on account of L. F. Braine, of New York City, in accordance with the sworn statement, dated May 3, 1902, and now on file with the collector of customs at New York.

Respectfully, JAMES B. REYNOLDS,
(43689.) *Acting Secretary.*

SURVEYOR OF CUSTOMS, *Albany, N. Y.*

(T. D. 27952.)

Special agents' districts.

[Circular No. 15.]

TREASURY DEPARTMENT, *March 1, 1907.*

To collectors and other officers of the customs:

From and after this date the districts of special agents of the customs will be as follows:

District No. 1.—The customs collection districts in the States of Massachusetts, Rhode Island, and Connecticut. Headquarters, Boston, Mass.

District No. 2.—The customs collection districts of the city of New York, Sag Harbor, and the districts in the State of New Jersey. Headquarters, New York City.

District No. 3.—The customs collection districts of Oswegatchie, Cape Vincent, Champlain, in the State of New York, and the customs collection districts of Burlington and Memphremagog, in the State of Vermont. Headquarters, Burlington, Vt.

District No. 4.—The customs collection districts of Buffalo Creek, Niagara, Genessee, Dunkirk, Erie, and Oswego. Headquarters, Buffalo, N. Y.

District No. 5.—The customs collection districts in the States of Pennsylvania and Delaware. Headquarters, Philadelphia, Pa.

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District No. 6.—The customs collection districts in the States of Maryland, Virginia, West Virginia, and the district of Georgetown, D. C. Headquarters, Baltimore, Md.

District No. 7.—The customs collection districts in the States of North Carolina, South Carolina, and Georgia. Headquarters, Savannah, Ga.

District No. 8.—The customs collection districts in the State of Florida. Headquarters, Tampa, Fla.

District No. 9.—The customs collection districts and ports in the States of Louisiana, Mississippi, and Alabama. Headquarters, New Orleans, La.

District No. 10.—The customs collection districts in the State of Texas, except the district of Paso del Norte. Headquarters, Galveston, Tex.

District No. 11.—The customs collection districts of Paso del Norte, Tex., and Arizona. Headquarters, El Paso, Tex.

District No. 12.—The customs collection districts and ports in the States of Indiana, Kentucky, and Ohio, except the districts of Miami, Sandusky, and Cuyahoga, Ohio. Headquarters, Cincinnati, Ohio.

District No. 13.—The customs collection districts and ports in the States of Missouri, Nebraska, Iowa, and Tennessee. Headquarters, St. Louis, Mo.

District No. 14.—The customs collection districts and ports in the State of Michigan and that portion of the customs district of Superior in the State of Wisconsin, and the districts of Miami, Sandusky, and Cuyahoga in the State of Ohio. Headquarters, Detroit, Mich.

District No. 15.—The customs collection districts of Chicago and Milwaukee and all ports in the States of Illinois and Wisconsin, except those in the district of Superior, Wis. Headquarters, Chicago, Ill.

District No. 16.—The customs collection districts of Minnesota and North and South Dakota. Headquarters, St. Paul, Minn.

District No. 17.—The customs collection districts in the State of California. Headquarters, San Francisco, Cal.

District No. 18.—The customs collection districts in the States of Oregon and Washington, and the district of Alaska. Headquarters, Seattle, Wash.

District No. 19.—The customs collection districts in the States of Maine and New Hampshire. Headquarters, Portland, Me.

District No. 20.—The customs collection districts and ports in the States of Colorado, Utah, and Wyoming. Headquarters, Denver, Colo.

District No. 21.—The customs collection districts and ports in the States of Montana and Idaho. Headquarters, Great Falls, Mont.

LESLIE M. SHAW, *Secretary.*

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(T. D. 27953.)

Parcels-post convention with the British colony of Bermuda.

[Circular No. 16.]

TREASURY DEPARTMENT, *March 1, 1907.*

To collectors and other officers of the customs:

The Department is advised by the Postmaster-General of the conclusion of a parcels-post convention between the United States and the British colony of Bermuda, effective February 1, 1907.

Said convention provides in part that there shall be admitted to the mails exchanged thereunder articles of merchandise and mail matter (except letters, post cards, and written matter) of all kinds that are admitted under any conditions to the domestic mails of the country of origin, except that no parcel may exceed 11 pounds in weight nor the following dimensions: Greatest length in any direction, 3 feet 6 inches; greatest length and girth combined, 6 feet; and must be so wrapped or inclosed as to permit their contents to be easily examined by customs officers and by postmasters.

The customary provisions regarding prohibited importations, subjecting the packages to customs duties and customs regulations for the protection of the customs revenue, and declarations appear in this convention.

Undelivered and refused packages are to be returned at the expiration of thirty days from their receipt at offices of destination.

When the contents of a parcel which can not be delivered are liable to deterioration or corruption, they may be destroyed at once, if necessary, or, if expedient, sold without previous notice or judicial formality for the benefit of the right person.

LESLIE M. SHAW, *Secretary.*

(T. D. 27954.)

Mail importations.

[Circular No. 17.]

TREASURY DEPARTMENT, *March 1, 1907.*

To officers of the customs and others concerned:

The following regulations, including the joint regulations approved February 25, 1907 (T. D. 27941), governing mail importations, supersede prior regulations on the subject, and are designed to better safeguard the revenue and to expedite delivery of such importations. They differ from former regulations mainly in that, first, collectors and surveyors of customs are to detail competent subordinates for duty at exchange post-offices of receipt whenever necessary to properly

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safeguard the revenue and expedite the delivery of foreign mails; second, postmasters at exchange offices of receipt are to provide proper facilities for the treatment of foreign mail packages by customs officers, and are to keep such officers advised of the prospective arrival of each mail from abroad; third, customs officers detailed at exchange offices of receipt are to segregate and stamp or label, as they arrive, sealed and unsealed, registered and unregistered packages (except letters which will be stamped or labeled by postal employees) which may contain dutiable articles from those clearly nondutiable, thus relieving postal employees of the responsibility of determining in the first instance whether such packages may be liable to duty; fourth, letters and sealed packages supposed to contain dutiable articles for delivery at post-offices remote from customs offices are, after being opened by addressees, to be promptly forwarded to the postmasters at places where the nearest customs officers are located for submission to such officers to determine whether the contents are in fact dutiable, thus eliminating unnecessary correspondence between postmasters and customs officers and reducing to a minimum the time required for the delivery of such packages; fifth, unsealed registered packages are to be examined and the duty rated by customs officers detailed at exchange offices of receipt, thus avoiding the use of the labels "Supposed liable to customs duty" and the delay incident thereto, when such packages are for delivery at offices other than exchange offices of receipt; sixth, labels bearing serial numbers and the legend "Supposed liable to customs duty" are to be affixed to letters and sealed packages for delivery outside of the exchange post-offices at which the articles arrive, so that they may be readily traced; seventh, undeliverable dutiable letters and packages which are not returned to countries of origin are to be turned over to customs officers for disposition under the customs laws and regulations; eighth, smuggled letters and packages placed in the domestic mails are to be delivered to customs officers under the conditions mentioned; ninth, newspapers are to be examined for dutiable articles at irregular intervals; and, tenth, duty and not a fine is to be assessed on printed matter, including books, not prohibited.

1. *Foreign mails generally.**—Mails are exchanged with foreign countries under the provisions of the universal postal, parcels-post, and postal conventions, and with the Philippine Archipelago, Guam, Tutuila, Panama Canal Zone, and the United States postal agency at Shanghai, China, under United States domestic postal conditions.

2. *Universal postal convention.**—The countries parties to the universal postal convention are Germany and the German protectorates, the United States of America and the insular possessions of the United States of America, the Argentine Republic, Austria, Belgium, Bolivia, Bosnia-Herzegovina, Brazil, Bulgaria, Chile,

* Treasury regulation.

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the Empire of China, the Republic of Colombia, the Independent State of Congo, the Empire of Korea, the Republic of Costa Rica, Crete, the Republic of Cuba, Denmark and the Danish colonies, the Dominican Republic, Egypt, Ecuador, Spain and the Spanish colonies, the Empire of Ethiopia, France, Algeria, the French colonies and protectorates of Indo China, the whole of the other French colonies, Great Britain and various British colonies, British India, the Commonwealth of Australia, Canada, New Zealand, the British colonies of South Africa, Greece, Guatemala, the Republic of Haiti, the Republic of Honduras, Hungary, Italy and the Italian colonies, Japan, the Republic of Liberia, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, the Republic of Panama, Paraguay, the Netherlands, the Netherlands colonies, Peru, Persia, Portugal and the Portuguese colonies, Roumania, Russia, Salvador, Servia, the Kingdom of Siam, Sweden, Switzerland, Tunisia, Turkey, Uruguay, and the United States of Venezuela.

The countries between which the universal postal convention is concluded form a single postal territory for the reciprocal exchange of articles of correspondence between their post-offices, and the stipulations extend to letters, post cards, prints of every kind, commercial papers, and samples of merchandise of no salable value.

The convention forbids the sending through the mails exchanged thereunder of articles liable to customs duty. Therefore, letters and packages which contain dutiable articles received in the mails from countries parties to the universal postal convention, and with which there is no parcels-post or postal convention, or to which the domestic postal conditions have not been applied, whether sealed or unsealed, being prohibited are liable to fines, not duties, except such as contain books and other printed matter. (See title "Books and other printed matter.")

The convention provides for the return to the country of origin of undelivered articles, except in cases where the country of destination is authorized by its legislation or domestic regulations to dispose of them otherwise.

Packages containing samples of merchandise may not exceed 12 ounces in weight, 12 inches in length, 8 inches in breadth, and 4 inches in depth; or, if in the form of a roll, 12 inches in length and 6 inches in diameter.

Packages containing commercial papers and prints may not exceed 4 pounds 6 ounces in weight, nor measure in any direction more than 18 inches; or, if in the form of a roll, 4 inches in diameter and 30 inches in length.

3. *Test to determine whether an unsealed parcel is a universal postal or parcels-post convention parcel.**—The test to determine

* Joint regulation.

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whether an unsealed dutiable parcel is liable to the provisions of the universal postal or parcels-post convention, when received from a country party to these two conventions, and with which there is no postal convention, or to which domestic postal conditions have not been applied, shall be the declaration, which is required to accompany parcels-post packages. In the absence of a declaration, the parcel shall be treated as a universal postal convention parcel, but may, however, be segregated and examined by customs officers at exchange offices of receipt, as is done in the case of parcels-post packages.

† Such unsealed universal postal convention parcels are liable to fines, not duties.

4. *Parcels-post conventions.**—There are parcels-post conventions between the United States and Australia, Bahamas, Barbados, Belgium, Bermuda, Bolivia, Chile, Colombia, Costa Rica, Danish West Indies, Denmark, Ecuador, Germany, Great Britain, Guatemala, Guiana (British), Honduras (British), Honduras (Republic of), Hongkong (colony of), Jamaica (including the Turks and Caicos Islands), Japan (including Korea), Leeward Islands, Mexico, Newfoundland, New Zealand (including Fanning Island), Nicaragua, Norway, Peru, Salvador, Sweden, Trinidad (including Tobago), Venezuela, and Windward Islands.

These conventions relate only to *parcels* of mail matter, and not to letters, post cards, and written matter.

Dutiable articles are admitted to the mails exchanged under the various parcels-post conventions on the following conditions, viz:

The parcels must be so wrapped or inclosed as to permit their contents to be easily examined by customs officers and postmasters duly authorized to do so; the customs declarations provided for by the conventions must contain accurate statements of the contents and value of parcels and be securely attached thereto; the parcels to be subject in the country of destination to customs duties, and to the regulations in force for the protection of the customs revenue, and must conform to the following conditions as to value, weight, etc.:

Parcels from Australia, Belgium, Denmark, Germany, Great Britain, Hongkong, (Colony of), Japan, Norway, Peru, and Sweden must not exceed $50 in value, 4 pounds 6 ounces in weight (11 pounds from Peru), nor the following dimensions: Greatest length in any direction, 3 feet 6 inches; greatest length and girth combined, 6 feet.

Parcels exceeding value, weight, and size will be immediately returned to countries of origin, through exchange offices of receipt.

Parcels from Colombia (Republic of), Costa Rica, Jamaica, and Mexico: No limitation as to value; weight must not exceed 11 pounds; greatest length in any direction, 2 feet; greatest girth, 4 feet.

* Treasury regulation.

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Parcels from Bahamas, Barbados, Bolivia, Chile, Danish West Indies, Guatemala, Guiana (British), Honduras (British), Honduras (Republic of), Leeward Islands, Newfoundland, New Zealand, Nicaragua, Salvador, Trinidad, Venezuela, and Windward Islands: No limitation as to value; weight must not exceed 11 pounds; greatest length, 3 feet 6 inches; greatest length and girth combined, 6 feet.

Duties and not fines will be assessed on parcels-post parcels, except such as contain cigars and cigarettes in illegal quantities or packages, when fines are assessed.

5. *Postal conventions.**—There are *postal conventions* between the United States and Canada, Mexico, Cuba, and the Republic of Panama.

These conventions authorize the exchange of articles of every kind or nature which are admitted to the domestic mails of the countries parties to the conventions, subject, however, in the country of destination to such regulations as may be deemed necessary for the protection of its customs revenue, and to certain prohibitions which appear in the regulations to follow.

Articles other than letters must never be closed against inspection, but must be so wrapped or inclosed that they may be readily and thoroughly examined by postmasters or customs officers authorized to do so.

No form of customs declaration is required to be attached to or accompany postal convention packages.

Duties and not fines will be assessed on postal convention packages, except such as contain cigars or cigarettes in illegal quantities or packages, when fines are to be assessed.

5½. *Sealed packages from Canada, Mexico, Cuba, and the Republic of Panama.*†—Sealed packages other than letters in their usual and ordinary form from Canada, Mexico, Cuba, and the Republic of Panama shall be immediately returned by exchange post-offices of receipt to the foreign exchange post-offices from which they were dispatched.

6. *Philippine Archipelago, Guam, Tutuila, Panama Canal Zone, and United States postal agency at Shanghai, China.**—The domestic postal conditions subject to certain prohibitions which appear in the joint regulations to follow are applicable to the Philippine Archipelago, Guam, Tutuila (including all adjacent islands of the Samoan group which are possessions of the United States), the Panama Canal Zone (which includes all the territory purchased of Panama, comprising the "Canal Zone" proper and the islands in the Bay of Panama named Perico, Naos, Culebra, and Flamenco), and the United States postal agency at Shanghai, China.

* Treasury regulation. † Joint regulation.

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The postal agent at Shanghai is required to stamp upon or affix to each package a statement of its contents and value for the assistance of the customs officers (T. D. 24773).

Unsealed parcels from countries parties to the universal postal, parcels-post, and postal conventions, or to which domestic postal conditions are applied, unaccompanied by parcels-post declarations, should be treated as postal convention or domestic condition parcels.

Duties and not fines will be assessed on unsealed parcels from countries to which domestic postal conditions are applied, except such as contain cigars or cigarettes in illegal quantities or packages, when fines are to be assessed.

7. *Detail of customs officers; proper facilities; notice of arrival of foreign mails.**—Whenever necessary to properly safeguard the revenue and expedite the delivery of foreign mails, collectors of customs will detail competent subordinates for duty at exchange post-offices of receipt at which offices postmasters will provide proper facilities for the treatment of foreign mails packages by customs officers, and shall keep such officers advised of the prospective arrival of each mail from abroad.

8. *Segregation of foreign mails at exchange post-offices of receipt.**—Customs officers are authorized to be present at the opening and distribution at exchange post-offices of receipt of mails from abroad, and to first segregate the dutiable and supposed dutiable packages, sealed and unsealed, registered and not registered (registered only in the presence of an authorized representative of a postmaster) from those clearly nondutiable. Letters in their usual and ordinary form will be segregated by postal employees.

9. *Letters and packages for ambassadors, etc.**—Letters and packages, sealed and unsealed, registered and not registered, addressed to ambassadors, ministers, and chargés d'affaires representing foreign governments at Washington, will be delivered to the addressees by postmasters without submission to or the intervention of customs officers.

10. *Letters and packages for consuls, etc.**—Letters and sealed packages addressed to consular and other officers not mentioned above, bearing the seal of the foreign government or inclosed in its official envelope and indicating from a casual examination by a customs officer, when such officer is available for the purpose, or by a postmaster when a customs officer is not available, without breaking the seal, that they contain only official documents, shall be immediately forwarded to the parties addressed. If letters and packages so addressed bear the appearance of containing merchandise of any character, they will be treated in the manner provided in these regulations for sealed packages.

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*Joint regulation.

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Unsealed parcels so addressed will be treated in the manner provided in these regulations for unsealed parcels.

11. *Letters and packages for Government officials.**—Letters and sealed packages addressed to officials of the United States Government, which, from a casual examination by a customs officer, when such officer is available for the purpose, or by a postmaster when a customs officer is not available, appear to contain only official documents, shall be immediately forwarded to the parties addressed. If letters and sealed packages so addressed bear the appearance of containing merchandise of any character, they will be treated in the manner provided in these regulations for sealed packages.

Unsealed parcels so addressed shall be treated in the manner provided in these regulations for unsealed parcels.

12. *Diplomatic or official pouches.**—It is not permissible to place dutiable or prohibited articles, sealed or unsealed, in "diplomatic pouches," so called, going directly to the Department of State. Such articles found therein are subject to the customs laws and regulations.

13. *Labels.**—For the purpose of tracing letters and sealed packages which may be liable to customs duty, *labels* designated Form "A" and Form "B," bearing serial numbers and the legend "Supposed liable to customs duty," will be furnished and should be attached to such letters and packages by customs officers when available, and by postal employees in the absence of customs officers. The instructions printed on the labels must be carefully observed.

These labels are *not* to be used when letters or sealed packages are for delivery within the limits of the exchange post-offices at which they are received from abroad, but, instead, such letters and packages are to be *stamped* by the segregating officer "Supposed liable to customs duty."

† Form "A" is to be used only when a letter or sealed package is for delivery at Boston, New York, Philadelphia, Baltimore, Chicago, New Orleans, and San Francisco, which are termed naval office ports. At these ports are stationed naval officers who audit all accounts arising thereat, rendering it unnecessary that the Auditor for the Treasury Department should keep a record of such packages, as is done in the case of packages for all other offices. This form, however, is not to be used when a letter or sealed package is for delivery at the exchange office at which it is received.

To illustrate: Letters and sealed packages arriving at New York for delivery at New York will not bear this label, but such articles received at New York for delivery at Boston, Philadelphia, Baltimore, Chicago, New Orleans, or San Francisco, and vice versa, or such

* Joint regulation. † Treasury regulation.

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articles arriving at Bangor, Me., an exchange office of receipt, for delivery at either of the other places mentioned, are to bear this form of label.

Customs officers at naval office ports will be careful to see that the serial numbers on the label, Form "A," attached to letters and sealed packages submitted for examination correspond with the serial numbers on the coupons received by them from the offices attaching labels.

Form "B" is to be used when letters or sealed packages supposed to contain dutiable articles are for delivery at offices other than Boston, New York, Philadelphia, Baltimore, Chicago, New Orleans, San Francisco, and the exchange office at which they are received.

In accounting for fines collected on mail importations customs officers will state on mail entries, Cat. 635, or corresponding form used at naval office ports, on the line containing "Post-office address," the serial number of the label against which the fines are assessed.

14. *Sealed package defined.**—A sealed package is such as can not be opened without destroying the wrapper or causing material damage to the contents.

15. *Letters and sealed packages generally.*†—The sending of dutiable articles in letters and sealed packages, registered or not registered, in the mails exchanged with any country is prohibited. (Letters and sealed packages addressed to ambassadors, ministers, and chargés d'affaires will, as before stated, be delivered without regard to this prohibition. See, also, title "Books and other printed matter.")

16. *Printed matter defined.*†—The act of 1879 (sec. 19) defines printed matter to be the reproduction upon paper by any process except that of handwriting of any words, letters, characters, figures, or images, or any combination thereof, not having the character of an actual personal correspondence.

The Post-Office Department defines printed matter to be "all impressions or reproductions obtained upon paper, parchment, or cardboard by means of printing, engraving, lithographing, autographing, or any other mechanical process, easy to recognize, except the copying press and typewriter."

17. *Books and other printed matter.*†—Duties and not fines will be assessed on books and other dutiable printed matter not absolutely prohibited from any country, whether contained in letters or sealed or unsealed packages. (Act of March 3, 1879, sec. 17, and art. 16, Universal Postal Convention, par. 4.)

18. *Sealed packages for delivery at exchange post-offices of receipt.**—Sealed packages, registered and not registered (except letters in their usual and ordinary form), for delivery at exchange

* Joint regulation. † Treasury regulation.

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post-offices at which received from abroad shall, after being segregated—the supposed dutiable from the nondutiable—by customs officers, and the supposed dutiable so *stamped* by said officers, be left in the custody of postmasters, who will immediately notify the addressees on the general form provided for that purpose by the Post-Office Department of the receipt of the packages, and to appear and open the same in the presence of a customs officer. The packages opened, the addressees will be required to at once hand the same to a customs officer for examination and, if dutiable, the issuance of mail entries and the collection of the proper charges, after which the packages shall be delivered to the addressees by a customs officer.

Registered packages will be segregated only in the presence of an authorized representative of the postmaster, and shall be receipted for by the addressees before being opened.

19. *Sealed packages for delivery at offices other than exchange post-offices of receipt.**—Sealed packages, registered and not registered (except letters in their usual and ordinary form), for delivery outside of exchange post-offices at which received from abroad will, after they are segregated—the supposed dutiable from the nondutiable—by customs officers, and the supposed dutiable properly *labeled* by said officers, be promptly forwarded by postmasters to the post-offices of delivery. Upon receipt of such a package at a post-office of delivery, the postmaster will notify the addressee on the general form provided by the Post-Office Department of its receipt and to appear and open the same in the presence of a customs officer, if one be located at said office. The package opened, the addressee will be required to at once hand the same to the customs officer for examination, and, if dutiable, the issuance of a mail entry and the collection of the proper charges, after which the package shall be delivered to the addressee by the customs officer.

If no customs officer is located at the post-office of delivery, the package will be opened in the presence of the postmaster, who will immediately thereafter forward the same, under official registration, to the postmaster at the place where the nearest customs officer is located, for submission to said officer, that he may determine whether the contents are in fact dutiable. The customs officer will promptly examine the contents and, if dutiable, issue a mail entry to cover the proper customs charges, place the same in the envelope provided for the purpose by the Treasury Department (Item 408, Division of Printing and Stationery), and securely attach the envelope to the package, which should be promptly returned, under official registration, to the postmaster at the post-office of delivery, who will collect the customs charges and transmit the same, together with the mail entry, in registered letter, using penalty envelope, to the customs officer who issued the entry.

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*Joint regulation.

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Registered packages will be segregated only in the presence of an authorized representative of the postmaster, and shall be receipted for by the addressees before being opened.

When a postmaster is not advised as to the location of the "nearest customs officer" this information will be furnished upon application to the Secretary of the Treasury.

20. *Letters for delivery at exchange post-offices of receipt.**—Letters in their usual and ordinary form, registered and not registered, for delivery at exchange post-offices at which received from abroad, shall be segregated—the supposed dutiable from the non-dutiable—by *postal* employees, and the supposed dutiable so stamped by said employees, after which they will be treated in the manner provided in these regulations for sealed packages for delivery at exchange post-offices of receipt.

21. *Letters for delivery at offices other than exchange post-offices of receipt.**—Supposed dutiable letters in their usual and ordinary form, registered and not registered, for delivery at post-offices other than the exchange offices at which received from abroad will be segregated and stamped "Supposed liable to customs duty" by *postal* employees, after which they will be treated by postmasters at offices of delivery in the manner provided in these regulations for sealed packages for delivery at offices other than exchange post-offices of receipt.

22. *Letters distributed by railway post-offices.**—Letters which may contain dutiable articles received and distributed by railway post-offices exchanging mails with Canada, Mexico, and Cuba, will be properly labeled (Form "A" or "B," as the case may be) "Supposed liable to customs duty" by railway postal clerks, and forwarded to destination, care being taken to follow the instructions printed on said labels. Postmasters at offices of delivery will apply the regulations for sealed packages for delivery at offices other than exchange post-offices of receipt.

23. *Letters and sealed packages smuggled and placed in domestic mails.**—When a customs officer can establish to the satisfaction of a postmaster or a clerk in charge of a railway post-office that a dutiable letter or sealed package has been smuggled into the United States and placed in the mails, it shall be the duty of the postmaster or railway postal clerk in charge to label or permit the customs officer to label such package "Supposed liable to customs duty." In addition, the officer labeling the package shall place thereon the word "Smuggled." The package shall then be forwarded to the office of delivery. Upon receipt of the package at the office of delivery, the postmaster shall notify the addressee to appear, receipt for in the case of a registered package, and open the same. When the package

* Joint regulation.

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has been opened, it shall be delivered into the custody of the nearest customs officer, who will be governed in the treatment thereof by the customs laws and regulations in relation to the seizure and forfeiture of smuggled articles.

24. *Failure of addressee to respond to notices to appear.**—If an addressee fails to respond within thirty days to the notice sent him of the receipt of a letter or sealed package, the same will be treated as undelivered, except in the case of a registered package, which, under the postal regulations, is required to be held for a longer period.

25. "*Delivery*" *defined.*†—"Delivery" is defined by Bouvier to be "transmitting the possession of a thing from one person into the power and possession of another." It must divest the donor of possession and dominion over the thing given, and must be a positive change of possession. Crouse *v.* Judson (84 N. Y. Supp., 755 *et seq.*). The word "delivery" means the actual manual delivery to the party addressed or his authorized agent. United States *v.* McCreedy (11 Fed. Rep., 225); Peoples National Bank *v.* Freeman's National Bank (47 N. E., 588, and 169 Mass., 129).

Therefore, if the addressee of an *ordinary* letter or sealed package, after opening the same, or the addressee of a *sealed registered* letter or package, after receipting for and opening the same, or the addressee of an *unsealed registered* package, after receipting for the same, declines to pay the duty, if any be due, and to accept full delivery, the letter or package shall be treated in the manner provided in these regulations for undelivered letters or sealed and unsealed packages. (Also, see title "Prohibited importations" and "Refusal of addressees to accept delivery of letters and sealed packages.")

26. *Seizure of letters and sealed packages.**—Postmasters retain custody of letters and sealed packages until they are opened by addressees. Therefore, customs officers will not open or seize any letter or sealed package until after it is opened by the addressee. Seizable packages for delivery at offices where there is no customs officer may, upon request of a customs officer, be taken into custody by postmasters, after being opened by addressees, and forwarded to said officers.

27. *Redirected letters and sealed packages.**—When a supposed dutiable letter or sealed package is redirected from one post-office to another, the postmaster at the forwarding office must be careful to see that the label "Supposed liable to customs duty" remains attached thereto, and shall notify the collector of customs as per label Form "A," or the Auditor for the Treasury Department as per label Form "B," as in the case of undeliverable articles, stating the date of forwarding and name of post-office to which forwarded.

* Joint regulation. † Treasury regulation.

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28. *Fines collected on letters and sealed packages can not be refunded.**—Customs fines collected on letters and sealed packages can not be refunded. If any dissatisfaction exists, payment should be suspended, and notice given to postmasters, who will hold the goods and immediately communicate the grounds of objection to the collectors of customs issuing the entries and forward to them such papers or statements as the addressees may submit.

29. *Release of mail importations.*†—The Secretary of the Treasury may, upon a proper showing, authorize the release, on payment of a fine equal to the duty, of any dutiable letter or sealed package.

Collectors and surveyors are authorized to release seized mail importations, first offense, when the duties do not exceed $25. When the duties exceed $25, or a second or subsequent offense has been committed, releases will be made only upon written application to the Secretary of the Treasury.

30. *Disposition of fines collected on mail importations.*†—Fines collected at nonnaval office ports on mail importations should be reported on abstract Cat. No. 1013, in strict compliance with the instructions printed thereon. Naval office ports will report such collections in the usual way.

31. *Refusal of addressees to accept delivery of letters and sealed packages.**—If an addressee of a letter or sealed package supposed liable to duty, after opening the same for the purpose of customs inspection, declines to accept delivery of the article, it shall be reclosed by means of an "official seal" of the Post-Office Department, marked "Refused," and treated as other undeliverable sealed articles, and the receipt in the case of a registered package shall be so marked.

Such articles may be immediately returned to countries of origin at request of, and prepayment of postage by, addressees.

32. *Undelivered letters and sealed packages.**—Undelivered letters and sealed packages supposed to contain dutiable articles, when returned to the country of origin, are to be forwarded through the Division of Dead Letters, Post-Office Department, or the exchange post-offices, as provided in the postal laws and regulations.

† Such return shall be made within thirty days from the date of the receipt of the article at the post-office of delivery, except sealed packages from Canada, Mexico, Cuba, and the Republic of Panama, which will be returned immediately upon their receipt at exchange offices. (This provision does not apply to letters and sealed packages which, after being opened by addressees, are found to contain obscene and immoral articles, drugs, medicines, etc., for the prevention of conception, or for causing unlawful abortion; lottery tickets or

* Joint regulation. † Treasury regulation.

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advertisements of lotteries; spuriously stamped articles of gold or silver, or their alloys; musical publications, and other articles in violation of the copyright laws—any and all of which when discovered by postmasters and customs officers will be treated as provided in these regulations for prohibited importations.)

When a dutiable parcel is undelivered a notation to that effect should be made by the postmaster at the office of delivery on the customs mail entry, when one has been issued, and the latter returned to the customs officer who issued it.

33. *Prohibited importations in letters and sealed packages.**—Any article prohibited transmission in the domestic mails is prohibited importation in the mails exchanged with foreign countries.

The importation of dutiable articles except books and other printed matter in letters and sealed packages being prohibited, such letters and packages (except *packages* from Canada, Mexico, Cuba, and the Republic of Panama, which are to be immediately returned to the country of origin) are liable to seizure, after delivery to addressees, and may be released for consumption on payment of fines equal to duties or appraised home values, or for return to the country of origin.

For other prohibited importations in letters and sealed packages, see title "Prohibited importations in unsealed parcels."

34. *Unsealed parcels for delivery at exchange post-offices of receipt.*†—Unsealed parcels, registered and not registered, for delivery at exchange post-offices at which received from abroad shall upon arrival at such offices be first segregated—the dutiable from the nondutiable—and examined by customs officers. Said officers will prepare mail entries to cover the duties on parcels found to be dutiable, which entries shall be securely attached to the parcels, and the latter left in the custody of postmasters, who will cause the delivery thereof and the collection of the duties. The sums so collected, together with the entries, should be promptly handed to the proper customs officers.

Registered parcels will be segregated and examined only in the presence of an authorized representative of a postmaster.

35. *Unsealed parcels for delivery at offices other than exchange post-offices of receipt.*†—Unsealed parcels, registered and not registered, for delivery outside of exchange post-offices at which received from abroad shall, as before, be segregated and examined by customs officers. Said officers will prepare mail entries to cover the duties on parcels found to be dutiable and place said entries in the envelopes provided for that purpose, which envelopes should be securely attached to the parcels and the latter left in the custody of postmasters. Postmasters will promptly forward such parcels to the post-offices of delivery. Upon receipt of the parcels at post-offices of delivery,

* Treasury regulation. † Joint regulation.

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postmasters will, on delivery to addressees, collect the duties and forward the same, together with the mail entries, in registered letters, using penalty envelopes, to the customs officers who issued the entries.

36. *Unsealed ordinary parcels distributed by railway post-offices.**—Unsealed ordinary parcels from Canada, Mexico, and Cuba distributed by railway post-offices will be segregated—the supposed dutiable from the nondutiable—by railway postal clerks, and the supposed dutiable parcels placed in sacks or packages, which are to be closed, marked "Supposed liable to customs duty," and forwarded to the post-office nearest the end of their run at which there is a customs officer. The postmaster at such office will promptly submit the sacks or packages to the customs officer, who will follow the regulations for the treatment of unsealed parcels for delivery at exchange post-offices or offices other than exchange post-offices, as the case may be.

37. *Railway post-offices receiving and disbursing mails from countries other than Canada, Mexico, and Cuba and from sea post-offices.*†—Railway post-offices receiving and distributing mails directly from sea post-offices and countries other than Canada, Mexico, and Cuba should be governed by the regulations concerning railway post-offices receiving and distributing mails from Canada, Mexico, and Cuba, except that sealed supposed dutiable packages will not be immediately returned to countries of origin.

38. *Treatment of articles conditionally free under paragraphs 483, 501, 503, 638, etc., of the tariff act of 1897.*†—Whenever, upon examination at exchange offices of receipt of unsealed foreign mail packages, the appraiser's return shall show the contents to be conditionally free of duty under paragraphs 483, 501, 503, 638, 649, 701, 702, and 703 of the tariff act of July 24, 1897, mail entries will be prepared showing the amount of the duty or fine. It shall be noted on the mail entry that the package contains articles which are probably free of duty. The package, together with the mail entry, will be forwarded to the postmaster at the place of delivery, with the appropriate blank form of oath attached, and the following notice to the postmaster:

Postmaster: Upon execution of the attached form of oath by the addressee of parcel, mail entry No. ———, before a notary public or customs officer authorized to administer oaths, and upon attestation of the oath by the customs officer's or notary's seal and signature, you will deliver the package free of customs duty, returning the oath, together with mail entry, with report of your action indorsed thereon, to the ——— ——— ——— Otherwise, the duty assessed will be collected on
(Here state office issuing mail entry.)
delivery.

If addressee is a corporation, the oath must be made by the president, secretary, treasurer, or other proper officer.

——— ———, *Collector.*

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*Joint regulation. †Treasury regulation.

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39. *Redirected unsealed parcels.**—When an unsealed parcel is redirected from one post-office to another, the postmaster at the forwarding office will be careful to see that the customs mail entry covering the duty accompanies the parcel to the office of delivery.

40. *Refusal of addressee to accept delivery of unsealed parcels.**—Should an addressee refuse to accept delivery of an unsealed dutiable parcel, the same shall be treated in the manner provided in these regulations for undelivered unsealed parcels, except in the case of an unsealed universal postal convention parcel, which should be treated as an undelivered sealed parcel. (See, also, title "Delivery defined.")

Such articles may be immediately returned to countries of origin at request of, and prepayment of postage by, addressees.

41. *Unsealed dutiable parcels smuggled into the United States and placed in the mails.**—When a customs officer can establish to the satisfaction of a postmaster or clerk in charge of a railway post-office that an unsealed dutiable parcel has been smuggled into the United States and placed in the mails, it shall be the duty of the postmaster or clerk in charge of the railway post-office to deliver the parcel (except in the case of a registered parcel, which will be treated as a sealed registered smuggled package) into the custody of the customs officer for proper disposition under the customs laws and regulations. The customs officer will at once notify the addressee of the parcel of the seizure thereof and the reason therefor.

42. *Certified invoice or bond required where value exceeds $100.*†—When parcels-post or postal convention parcels or parcels from countries to which the domestic postal conditions are applied exceed $100 in value, formal entry and a duly certified invoice or a bond for the production thereof, under section 4 of the customs administrative act, should be required. (See T. D. 13531.)

This provision does not apply to parcels from Australia, Belgium, Denmark, Ecuador, Germany, Great Britain, Hongkong (colony of), Japan, Norway, Peru, and Sweden. (See title "Prohibited importations.")

43. *Undervaluations in parcels-post declarations.*†—The provisions of section 32 of the act of July 24, 1897, relating to undervaluation and seizure are not to be applied to mail parcels when the value returned by the appraiser exceeds the value stated by the sender. (T. D. 26664.) Customs officers will, however, require formal entry whenever it is deemed necessary for proper administration. In cases where it appears that the same sender makes a practice of undervaluing in the declarations the contents of parcels-post packages the facts will be reported to the Secretary of the Treasury for instructions.

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* Joint regulation. † Treasury regulation.

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44. *Letters and sealed and unsealed parcels of a value less than $1.** —Letters, sealed and unsealed parcels containing articles of a value less than $1, not purchased abroad by order of the addressees, and clearly intended as gifts or presents from the senders, will be treated as nondutiable. Where an addressee is in the habit of receiving such articles claimed to be gifts or presents, customs officers will be careful to verify such claim before passing the articles free of duty.

Letters, sealed and unsealed parcels containing dutiable articles purchased abroad by order of the addressees for personal use or otherwise, and parcels containing dutiable articles intended for sale, will be charged with duty, regardless of the value or amount of duty.

45. *Samples.**—Duty or a fine will not be assessed on a letter or sealed or unsealed parcel containing samples, less than $1 in value or of no commercial value, and so reported by the appraiser; but where more than one parcel to the same addressee is received in the same mail, and the appraising officer shall determine that the samples in the aggregate have a commercial value of $1 or more, duty or a fine on the appraised value will be collected.

46. *Customs mail entries.*†—Customs officers will issue mail entries to cover each dutiable article, sealed or unsealed, examined by them. Such entries covering undeliverable dutiable articles must be marked by postmasters to show how the articles were disposed of at their offices and returned to the collectors of customs who issued them.

† When it is definitely determined that the duty or fine can not be collected, the facts should be stated by the customs officer issuing the mail entry in a report to the Secretary of the Treasury, who will issue proper instructions.

Mail entries once issued will not be canceled except by authority of the Secretary of the Treasury.

When mail entries are to accompany parcels for delivery at postoffices remote from the customs office issuing them, they shall be inclosed in the envelope provided for the purpose, which shall be securely attached to the parcel.

47. *Stamping nondutiable letters, sealed and unsealed parcels.*†—When a customs officer determines that any letter, or sealed or unsealed parcel, examined by him is not dutiable, he shall stamp it "Passed free of duty" or "Not dutiable," attach his initials or full signature, and state the name of the port.

48. *Failure of customs officers to take prompt action.*†—Should a customs officer fail to take prompt action concerning any letter, or sealed or unsealed parcel, submitted to him for examination by a postmaster, the Secretary of the Treasury should be duly notified by such postmaster.

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* Treasury regulation. † Joint regulation.

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49. *Failure of postmasters to make prompt return of customs collections.**—If a postmaster fails to make return of customs collections within thirty days from the date of the issuance of a mail customs entry, the customs officer issuing such entry will report the facts to the chief post-office inspector, Post-Office Department, Washington, D. C., for investigation. The chief post-office inspector will promptly advise the customs officer of the result of such investigation.

50. *Failure to detect dutiable articles at exchange offices.**—Should a letter, or sealed or unsealed parcel, containing articles supposed or known to be dutiable, escape detection at an exchange office of receipt, it shall be the duty of the postmaster at the office of delivery to submit the package to the nearest customs officer for proper action.

51. *Post-offices not exchange offices of receipt receiving mails from abroad and from sea post-offices.*†—Customs officers and postmasters at offices not designated as exchange offices of receipt, but which may receive mails directly from abroad and from sea post-offices, should apply the regulations concerning mail matter received at exchange offices of receipt.

52. *Examination of newspapers by customs officers.**—Postmasters at exchange offices of receipt will permit customs officers to examine at irregular intervals, and at least once every thirty days, newspapers received in the mails from foreign countries. If deemed necessary for the protection of the revenue, such newspapers may be examined at more frequent intervals.

53. *Careless or improper repacking.**—Postal and customs employees must exercise the utmost care in repacking articles contained in parcels opened by them. In any case where it can be shown that an article has sustained damage as the result of careless or improper repacking, the postal or customs employee who repacked the article will be held responsible for the damage.

54. *Railway postal clerks to report intercepted articles "Supposed liable to customs duty."*†—Railway postal clerks are required to make daily reports to the superintendents of the railway mail service divisions, and the superintendents to make monthly reports to the Post-Office Department showing the number and character of all articles, sealed and unsealed, which they may intercept and label "Supposed liable to customs duty."

55. *Disposition of moneys collected on unsealed parcels.*†—The duties collected on unsealed parcels-post and postal convention parcels and parcels from countries to which the domestic postal conditions are applicable are to be accounted for as receipts from customs.

Applications for refund of duties paid on mail importations should be submitted to the Secretary of the Treasury with a full statement of the facts.

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* Joint regulation. † Treasury regulation.

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56. *Undelivered unsealed parcels.**—Undeliverable unsealed dutiable parcels (except registered from Cuba and the Republic of Panama) from Canada, Mexico, Cuba, and the Republic of Panama will be specially returned by postmasters at post-offices of delivery within a period of thirty days from the date of their receipt at such offices, under official registration, marked to show why they were not delivered to the collectors of customs at the United States exchange post-offices of receipt issuing the mail entries covering such parcels. Collectors of customs will, after satisfying themselves that the mail entries correspond therewith, hand the parcels to the postmasters at the exchange offices for return to the country of origin.

Undelivered unsealed registered parcels from Cuba and the Republic of Panama will be returned through the Division of Dead Letters, Post-Office Department.

† Unsealed parcels from countries other than those mentioned above which can not be delivered will be marked to show the cause of non-delivery, and when returned to the country of origin must be sent back through the United States exchange office of receipt, and not through the Division of Dead Letters, Post-Office Department, as follows: From Australia, Belgium, Ecuador, Germany, Hongkong (colony of), Japan, Norway, Peru, and Sweden, when value, weight, and size are not exceeded; and from Bermuda, Bolivia, Chile, Costa Rica, the Danish West Indies, Guiana (British), Guatemala, Honduras (Republic of), Mexico, Newfoundland, New Zealand, Nicaragua, Salvador, Trinidad, Venezuela, and the Windward Islands, will be returned to the country of origin at the expiration of thirty days from the date of their receipt at the office of destination; from Denmark and Great Britain, if value, weight, and size are not exceeded, sixty days; and from the Bahamas, Barbados, Colombia, Honduras (British), Jamaica, and the Leeward Islands, ninety days.

Parcels from Australia, Belgium, Denmark, Ecuador, Germany, Great Britain, Hongkong (colony of), Japan, Norway, Peru, and Sweden which exceed value, weight, or size will be immediately returned to the countries of origin.

Undelivered parcels containing obscene and immoral articles, lottery tickets, advertisements, etc., falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys (on and after June 13, 1907), and musical publications and other articles which violate the copyright laws are not to be returned to the country of origin, but will be treated in the manner prescribed in these regulations for "Prohibited unsealed importations."

Undelivered unsealed parcels, the contents of which are liable to deterioration or corruption, need not be returned to the country of

* Joint regulation. † Treasury regulation.

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origin, but may be destroyed if of no commercial value. If of commercial value and dutiable, they should be turned over to the proper customs officer for disposition under the customs laws and regulations governing unclaimed or seized articles, as the circumstances may warrant.

57. *Disposition of letters and sealed or unsealed parcels not returned to country of origin.**—If for any cause an undelivered supposed or known dutiable letter, or sealed or unsealed parcel, is not returned to the country of origin, it shall be delivered to the proper customs officer for disposition under the customs laws and regulations governing seized or unclaimed articles, as the case may be.

58. *Prohibited importations.**—Postmasters and customs officers will take special notice of the postal and customs regulations concerning copyrighted and other articles prohibited importation in the mails.

† Any article prohibited transmission in the domestic mails is prohibited importation in the mails exchanged with foreign countries.

Parcels from Australia, Belgium, Denmark, Ecuador, Germany, Great Britain, Hongkong (colony of), Japan, Norway, Peru, and Sweden which exceed $50 in value, 4 pounds 6 ounces in weight (Peru, 11 pounds), and the following dimensions: Greatest length in any direction, 3 feet 6 inches, and greatest length and girth combined, 6 feet, are prohibited transmission in the mails and should be immediately returned to countries of origin.

Prison-made goods (sec. 31 of the act of July 24, 1897) and articles copying or simulating the names or trade-marks of domestic manufactures or manufacturers, etc. (sec. 11 of the act of July 24, 1897), are prohibited importation. Such articles will be seized (after being opened by addressees in the case of letters and sealed packages) and may be released only for return to the country of origin.

Articles of food and drugs adulterated or misbranded are prohibited importation. (Acts of August 30, 1890, March 1, 1899, and June 30, 1906.) Whenever it shall appear to the satisfaction of the proper customs officer that a letter or sealed or unsealed parcel contains any article of food or drug, adulterated or misbranded, such article will be seized (after being opened by addressees in the case of letters and sealed packages), and may be released only for return to the country of origin.

The importation of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys is prohibited by the act of June 13, 1906, which becomes effective June 13, 1907. On and after that date such importations should be detained and the facts immediately reported to the Secretary of the Treasury for proper instructions. (T. D. 27434.)

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* Joint regulation. † Treasury regulation.

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Cigars or cigarettes illegally packed or when in less quantity than 3,000 are prohibited importation by section 26 of the act of August 28, 1894, amending section 2804 of the Revised Statutes, and will be seized (only after being opened by addressees in the case of letters and sealed packages), but may be released for consumption on payment of the internal-revenue tax (except when from the Philippine Islands) and fines equivalent to duties or appraised home values, as the case may be, or for return to the country of origin. No internal-revenue tax is chargeable on cigars from the Philippine Islands. Care should be taken by customs officers and postmasters to see that appropriate internal-revenue and customs-inspection stamps (only customs-inspection stamps when articles are from Philippine Islands) are affixed to packages of cigars and cigarettes before delivery to addressees.

Letters and sealed packages supposed to contain music prohibited importation by the copyright laws will be so marked by postmasters at exchange offices of receipt. The postmasters at offices of delivery will, in such cases, require addressees to open the letters or packages in their (the postmasters') presence, and if the contents are found to be music the same shall be forwarded to the nearest customs officer, who will, if the music appears to be in violation of the law, notify the addressees and the owners of the copyright of the detention thereof. If within three months the owners of the copyright do not institute forfeiture proceedings, or the addressees do not appear and show to the satisfaction of the customs officers that the articles are not prohibited, the same shall be destroyed. Unsealed parcels containing music will be immediately delivered into the custody of the nearest customs officer, who will proceed as in the case of letters and sealed packages containing music. (See article 471, Customs Regulations of 1899, and order No. 255, issued June 25, 1898, by the Postmaster-General.)

An accurate record should be kept showing name and address of addressee, titles of publications, name and address of sender, from whom received, date of reception, and final disposition of all musical publications received by mail and held for violation of the copyright laws. (T. D. 20427 and T. D. 20490.)

Other copyrighted articles prohibited importation by section 4956 of the Revised Statutes, as amended by section 3 of the act of March 3, 1891, and articles bearing false notice of copyright (section 4963 of the Revised Statutes, as amended by the act of March 3, 1897), will, after being opened by addressees in cases of letters and sealed packages, be seized, and the facts reported to the Secretary of the Treasury for proper instructions.

There is an absolute prohibition against the importation of obscene and immoral articles, drugs, medicines, or any articles for the preven-

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tion of conception, or for causing unlawful abortion, and lottery tickets and lottery advertisements, etc. (section 16 of the act of July 24, 1897). All letters or sealed or unsealed packages containing such articles shall (after being opened by addressees in case of letters and sealed packages) be disposed of under sections 330, 331, 333, 538, 559, 565, etc., of the postal laws and regulations. (T. D. 18500 and order No. 556 of 1897 issued by the Postmaster-General.)

The various parcels-post and postal conventions prohibit the forwarding in the mails of poisons and explosive or inflammable substances; fatty substances; liquids, and substances which easily liquefy; confections and paste; live or dead animals (except live bees, and dead insects and reptiles when thoroughly dried); fruits and vegetables which easily decompose, and articles which might in any way damage or destroy the mails or injure the persons handling them. Customs officers finding such articles in foreign mails will, if dutiable, and the articles are not returned to the country of origin, assess fines equivalent to duties thereon.

59. *Mails not to be delayed.**—The mails are not to be unnecessarily delayed in order to search for dutiable articles.

60. *Requisitions for forms.*—Facsimiles of the labels and postal-card notice provided for by the joint regulations appear below. Supplies of the labels will be furnished upon application to the Secretary of the Treasury and of the postal-card notices upon application to the Postmaster-General.

The envelopes herein provided for will be furnished upon application to the Secretary of the Treasury.

LESLIE M. SHAW, *Secretary.*

[For forms provided for by foregoing regulations, see T. D. 27941.]

(T. D. 27955.)

Average prices.

Section 2910 of the Revised Statutes is a rule for the assessment of the rates of duty and not a rule for the appraisement of values. It has no application except to cases where the goods that have been invoiced at an average rate are not merely of different values but are also subject to different rates of duty, in which case the duty is to be assessed upon the whole invoice at the rate to which the highest valued goods are subject.

TREASURY DEPARTMENT, *March 1, 1907.*

SIR: Referring further to your letters of September 19 and October 23 last, in which you request information concerning the application of the provisions of section 2910 of the Revised Statutes to certain importations at your port of glassware and pickles, which it seems were consolidated on one invoice at a lump sum and returned by the appraiser at different values, I have to inform you that the matter

* Joint regulation.

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was submitted to the Attorney-General, and I inclose herewith for your information and guidance a copy of his reply. It will be observed therefrom that the provisions of section 2910 (*ante*) do not apply to cases of the kind submitted by you.

The entry papers are herewith submitted.

Respectfully, JAMES B. REYNOLDS,
Acting Secretary.

(40879.)

COLLECTOR OF CUSTOMS, *San Juan, P. R.*

[Opinion of the Attorney-General.]

DEPARTMENT OF JUSTICE, *Washington, February 1, 1907.*

SIR: I have the honor to acknowledge receipt of your letter of November 14, 1906, in reference to 13 crates of common glassware and 32 cases of pickles, imported at the port of San Juan, P. R., with inclosed copies of letters of the collector at that port, from which it appears that the several crates of glassware were consolidated on one invoice at a lump sum, and that the several cases of pickles were likewise consolidated upon another invoice; that upon examination the appraiser found the merchandise to be of different values and so returned it—that is, that the glassware in the several crates was of different values and the pickles in the several cases likewise of different values; but that, as stated in your letter, the whole of the glassware is chargeable with the same rate of duty, as are also the pickles.

In your letter you request my opinion as to whether in such case a rule of appraisement is afforded by the provisions of section 2910 of the Revised Statutes providing that "when merchandise of the same material or description, but of different values, is invoiced at an average price, and not otherwise provided for, the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject," and whether under this section the assessment of the duty upon the glassware and pickles, respectively, is required to be made upon the basis of the highest valued goods involved in either invoice, or whether, on the other hand, this status is to be construed literally as relating only to cases where the goods are subject to different rates of duty.

I am of the opinion that section 2910 is a rule for the assessment of the rates of duty, and not a rule for the appraisement of values, and that it has no application except to cases where the goods that have been invoiced at an average rate are not merely of different values but are also subject to different rates of duty, in which case the duty is to be assessed upon the whole invoice at the rate to which the highest valued goods are subject; and that as it appears in this instance that all the glassware is chargeable with the same rate of duty, and the pickles likewise, the provisions of section 2910 have no application to either invoice.

While in the first part of this section it is made one of the conditions of its application that the goods involved shall be "of different values," the final clause laying down the rule that shall then govern does not provide that the goods shall be appraised at an average value based upon that of the highest valued goods, but uses the very different and explicit language that "the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject."

That this section was intended to refer to the rate of assessment rather than the appraisement of values is further emphasized by the contrast between the language of this section and that of section 2911 immediately following, which provides that—

Whenever articles composed wholly, or in part, of wool or cotton, of similar kind, but different quality, are found in the same package, charged at an average price, it shall be the duty of the appraisers to adopt the value of the best article contained in such package, and so charged, as the average value of the whole.

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The contrast between the concluding phrase, "the duty shall be assessed upon the whole invoice at the rate to which the highest valued goods in such invoice are subject," in section 2910, and the corresponding phrase, "it shall be the duty of the appraisers to adopt the value of the best article contained in such package * * * as the average value of the whole," in section 2911, is very marked and indicates clearly that section 2910 was intended to apply only in cases where the goods were not only of different values but also chargeable with different rates of duty.

Hence, when the merchandise thus invoiced all bears the same rate of duty, it follows that section 2910 has no application and that the values of the goods are not to be fixed by that of the highest valued article, but are to be appraised at actual values, in accordance with the general provisions of the customs laws, except in such special cases as may be provided for under section 2911, or otherwise.

I regret that in reaching this conclusion I have been compelled to differ from the contrary views expressed in T. D. 9516, T. D. 12393, and T. D. 25326. I am unable, however, to concur in the view expressed in T. D. 9516, that "the word 'rate,' used in the latter part of the section, is used in the sense of amount of duty," or to reach the conclusion that the express provision of section 2910, that "the duty shall be assessed" at a certain "rate," is equivalent to a direction as to the amount at which the values of the goods shall be appraised—a conclusion which would require the language of the statute to be construed in a manner at variance with its fixed legal significance, and would, furthermore, result in the unnecessary hardship of imposing upon the importer merely because he has consolidated upon one invoice, at an average rate, articles of the same description and bearing the same rate of duty, an artificial valuation in excess of their real value. In case of doubt as to whether a higher or lower duty is imposed, that doubt should be resolved in favor of the importer, "since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language." American Net and Twine Company *v.* Worthington (141 U. S., 468).

In none of these Treasury decisions, furthermore, is the distinction noted between the provisions of section 2910 and of section 2911, and, in fact, in T. D. 25326 it is apparently assumed that they are the same, the decision referring to the case of *In re* Schefer (49 Fed. Rep., 216) as involving section 2910, whereas, in fact, the goods involved in that case were cotton goods and section 2911 was the only section considered by the court.

Respectfully, CHARLES J. BONAPARTE, *Attorney-General.*

The SECRETARY OF THE TREASURY.

(T. D. 27956.)

Dyers' sticks.

The Department's acquiescence (T. D. 27928) in the decision of the United States circuit court, southern district of New York (T. D. 27855), involving the classification of dyers' sticks, covers both bamboo sticks and sticks of wood other than bamboo.

TREASURY DEPARTMENT, *March 2, 1907.*

SIR: The Department's acquiescence of the 16th ultimo (T. D. 27928) in the decision of the United States circuit court for the southern district of New York, in suits 4249 and 4250 (United States *v.* Knipscher & Maas Silk Dyeing Company, covers both the

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bamboo sticks held to be free of duty under paragraph 700 of the tariff act of 1897 and the sticks of wood other than bamboo which were held by the Board and the court to be dutiable at the rate of 20 per cent ad valorem, under paragraph 198, as wood unmanufactured. You will be governed accordingly.

Respectfully, JAMES B. REYNOLDS,
(30732.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27957.)

Drawback on spit-fire plugs and center cores.

Drawback on Mosler spit-fire plugs and Mosler complete center cores manufactured by A. R. Mosler & Co. (Incorporated), of New York, with the use of imported porcelain tubes.

TREASURY DEPARTMENT, *March 2, 1907.*

SIR: On the exportation of Mosler spit-fire plugs and Mosler complete center cores manufactured by A. R. Mosler & Co. (Incorporated), of New York City, with the use of imported porcelain tubes, a drawback will be allowed equal in amount to the duty paid on the porcelain tubes so used, less the legal deduction of 1 per cent.

The preliminary entries must show the marks and numbers of the shipping packages and the number separately of Mosler spit-fire plugs and Mosler complete center cores exported in each package and in the entire shipment.

The drawback entry must show the total number separately of Mosler spit-fire plugs and Mosler complete center cores exported, and the number of imported porcelain tubes contained therein, describing the latter as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 26, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported porcelain tubes which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantities, provided that in no case shall it exceed one porcelain tube for each of said plugs or cores.

Respectfully, JAMES B. REYNOLDS,
(44815.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27958.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by the Turco-American Tobacco Company of New York from imported tobacco.—T. D. 23839 of July 3, 1902, extended.

TREASURY DEPARTMENT, *March 2, 1907.*

SIR: The Department's regulations of July 3, 1902 (T. D. 23839), providing for the allowance of drawback on the exportation of cigarettes of various kinds and sizes and tobacco prepared for use in the manufacture of cigarettes or for smokers' use as such by the American Tobacco Company of New York, with the use wholly of tobacco imported from Turkey, are hereby extended, so far as they relate to the tobacco, to cover the exportation of similar merchandise manufactured by the Turco-American Tobacco Company of New York City, in accordance with their sworn statement, dated February 25, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(44186.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T.D. 27959.)

Thick soy.

Appeal directed from decision of Board of United States General Appraisers, G. A. 6550 (T. D. 27944), involving the dutiable classification of so-called thick soy.

TREASURY DEPARTMENT, *March 4, 1907.*

SIR: The Department is in receipt of the decision of the Board of United States General Appraisers, G. A. 6550 (T. D. 27944), of February 21, 1907, wherein it is held that certain so-called thick soy imported from China, having in part as component materials thin soy, or the ingredients of thin soy, which is concededly a sauce, is not similar to the latter in the use which distinguishes it as a sauce, and is therefore not dutiable as assessed under paragraph 241 of the tariff act, but as a nonenumerated unmanufactured article at the rate of 20 per cent ad valorem under section 6 of the said act.

In view of the importance of the issue, you are hereby directed to file an application for a review of the said decision of the Board of United States General Appraisers in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(44775.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27960.)

Common carrier.

Approving bond of the Insular Line for transportation of appraised merchandise between New York and New Orleans, La., and ports in the island of Porto Rico, and discontinuing shipments under bond of the Peck Steamship Company, approved January 10, 1906.

TREASURY DEPARTMENT, *March 5, 1907.*

SIR: The bond of the Insular Line, transmitted with your letter of the 27th ultimo, for bonding said company for the transportation of appraised merchandise under sections 3000 and 3001 of the Revised Statutes, between New York and New Orleans, La., and the different ports in the island of Porto Rico, is hereby approved and one copy of the bond is transmitted herein for the files of your office.

The carrier named is authorized under this bond to transport appraised merchandise between the ports of New York and New Orleans, La., and any places which have been or may be hereafter designated as ports in the island of Porto Rico, in suitable American vessels owned or controlled by said company and plying on the Atlantic Ocean between the places named.

You will discontinue the shipment of appraised merchandise under the bond of the Peck Steamship Company, which was approved January 10, 1906, and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(33696.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27961—G. A. 6551.)

Woven silk fabrics.

Woven fabrics in the piece, made of spun silk yarns, are dutiable according to weight, condition, etc., under the provisions of paragraph 387, tariff act of 1897.

United States General Appraisers, New York, February 26, 1907.

In the matter of protests 212533, etc., of Wm. F. Read & Sons Company against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

HOWELL, *General Appraiser:* The goods in question consist of woven fabrics in the piece, composed wholly of silk, which were assessed with duty at the rate of $3 per pound under the provisions of paragraph 387 of the act of July 24, 1897.

The claim is the same in each of the protests, and is that the goods are dutiable at 50 per cent ad valorem under said paragraph 387 or paragraph 391.

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On the hearing no suggestion was made that the goods had not been assessed at the appropriate rate under paragraph 387, provided they are held to fall within the provisions of that paragraph, and as the ad valorem rate of 50 per cent therein specified is simply a minimum rate to be assessed only when that rate is higher than the specific rates therein provided for, we need not give further consideration to the claim made in the protests under that paragraph.

The importers contend, however, that because the fabrics are made of spun silk yarns, a fact certified to by the appraiser, they are to be excluded from paragraph 387, and not being otherwise specifically provided for in the act, they are properly dutiable under paragraph 391 as manufactures of silk.

Spun silk consists of silk yarns produced from waste silk—that is, from silk consisting of cocoons which have been pierced by the moth or are otherwise imperfect, from which the silk can not be reeled, of broken filatures incidental to the reeling of perfect cocoons, and of the refuse produced in the process of "throwing" silk. In order to produce spun silk it is necessary that the gum in the waste silk should be either wholly or partially removed. Spun silk may, therefore, be said to contain very little, if any, gum, and the importers contend that, inasmuch as Congress in prescribing rates of duty in paragraph 387 for woven silk fabrics of different weights, and containing various percentages of silk, has, in the various classes, specifically provided for such fabrics containing silk "in the gum," this indicates the intention to include in this paragraph only such silk fabrics as are made of silk other than spun silk. In other words, that inasmuch as spun silk never contains any appreciable quantity of gum, there are no fabrics made from spun silk which can be said to be "in the gum," and as the Congress has provided for fabrics in that condition in the various groups or classes specified in paragraph 387, they must have intended to cover only such fabrics as are made from silk yarns which, as yarns, have contained gum.

We do not think that the provisions of paragraph 387 are so limited. The paragraph provides broadly for all woven silk fabrics in the piece which are not otherwise specially provided for in the act, and the rate of duty to be levied is fixed according to the weight of the fabric per square yard, the percentage of silk it contains, whether the silk is in the gum, or dyed in the yarn, or in the piece, or printed, and whether or not the silk is weighted in the dyeing to exceed the original weight of the raw silk. The provisions of the paragraph are very comprehensive, specifying in great detail the requirements necessary to bring the goods within a given class, and we think that if the Congress had intended to exclude from the paragraph fabrics which comply with its requirements in every other respect save that

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they are made of spun silk, it would have made an express exception to that effect, as it did when excepting spun silk from the provision for silk thread or yarns in paragraph 385.

The goods are admittedly woven fabrics in the piece, and we find that they are composed wholly of silk, dyed in the thread or yarn, and not weighted in the dyeing to exceed the original weight of the raw silk.

We hold that they are properly dutiable at $3 per pound under the provisions of paragraph 387 of said act as assessed.

The protests are accordingly overruled and the decision of the collector in each case is affirmed.

(T. D. 27962—G. A. 6552.)

Packed-package fees—Jurisdiction.

1. PACKED-PACKAGE ACT.

The act of May 1, 1876, modifies all other acts with reference to the entry of packed packages and legalizes an otherwise incomplete entry when made in substantial compliance therewith.

2. SAME—FEES.

The fee charged by the collector of the port of New York upon the clearance of a packed package is not a charge for the removal or storage of merchandise, as provided for in section 2926 of the Revised Statutes, but is a fee charged for rendering special services incident to the administration of the act of May 1, 1876. There is no authority of law for charging this fee; hence the same is illegal.—Acker, Merrall & Condit's case, G. A. 5689 (T. D. 25331).

3. JURISDICTION OF BOARD OF GENERAL APPRAISERS.

The Board of United States General Appraisers is given jurisdiction by section 14 of the customs administrative act to hear and decide a protest against the action of the collector in charging the importer a fee in connection with the administration of the act of May 1, 1876 (packed-package act), though the merchandise covered by the protest was never regularly entered.—*In re* Chichester (48 Fed. Rep., 281) and Lloyd's case, G. A. 6468 (T. D. 27680), distinguished.

United States General Appraisers, New York, February 26, 1907.

In the matter of protests 206753, etc., of the American Express Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* By these protests the right of the collector to exact the sum of 20 cents on each package in connection with the entry of what are known to the law as packed packages is called in question. The importer contends that there is no authority of law for this exaction and that all fees were abolished by section 22 of the customs administrative act of 1890. The contention of the

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collector is that the charge is for storage and is authorized by section 2926 of the Revised Statutes. That part of section 22 which is invoked reads as follows:

SEC. 22. That all fees exacted and oaths administered by officers of the customs, except as provided in this Act, under or by virtue of existing laws of the United States, upon the entry of imported goods and the passing thereof through the customs, and also upon all entries of domestic goods, wares, and merchandise for exportation, be, and the same are hereby abolished.

Section 2926, invoked by the Government representative, reads as follows:

SEC. 2926. All merchandise, of which incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice, or for any other cause, or which has received damage during the voyage, shall be conveyed to some warehouse or storehouse, to be designated by the collector, in the parcels or packages containing the same, there to remain with due and reasonable care, at the expense and risk of the owner or consignee, under the care of some proper officer, until the particulars, cost, or value, as the case may require, shall have been ascertained either by the exhibition of the original invoice thereof, or by appraisement, at the option of the owner, importer, or consignee; and until the duties thereon shall have been paid, or secured to be paid, and a permit granted by the collector for the delivery thereof.

In addition to these provisions of the law, the act of May 1, 1876 (19 U. S. Stat., 49), must be considered. Omitting the enacting clause, this statute is as follows:

That a separate entry may be made of one or more packages contained in an importation of packed packages consigned to one importer or consignee, and concerning which packed packages no invoice, or statement of contents or values, has been received.

Every such entry shall contain a declaration of the whole number of parcels contained in such original packed package; and shall embrace all the goods, wares, and merchandise imported in one vessel at one time for one and the same actual owner, or ultimate consignee.

SEC. 2. That the importer, consignee, or agent's oath prescribed by section twenty-eight hundred and forty-one of the Revised Statutes, is hereby modified for the purposes of this Act, so as to require the importer, consignee or agent to declare therein that the entry contains an account of all the goods —— imported in the —— whereof —— is master, from —— for account of —— which oath so modified, shall in each case, be taken on the entry of one or more packages contained in an original package. But nothing in this act contained shall be construed to relieve the importer, consignee, or agent from producing the oath of the owner or ultimate consignee in every case, now required by law; or to provide that an importation may consist of less than the whole number of parcels contained in any packed package, or packed packages consigned in one vessel at one time, to one importer, consignee or agent.

It has been settled by repeated decisions that section 2926 of the Revised Statutes was not repealed or the charge for storage therein provided for abolished by section 22 of the customs administrative act of 1890, for the reason that the charge provided for in section 2926 is a charge for storage and not a fee within the meaning of the law. Keveney's case, G. A. 2825 (T. D. 15476); Bonneville's case, G. A. 3269 (T. D. 16573); Kennedy *v.* Magone (158 U. S., 212).

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Other than section 2926 it is not contended that there ever existed any law authorizing the fee or charge under dispute in the case at bar. This fee is not therefore abolished by section 22, for it either exists by virtue of section 2926 or without express authority of law.

May this fee or charge be exacted under the provisions of section 2926 is the question first to be considered. To be authorized by this section it must be a charge for an expense incurred incident to the removal and storage of the merchandise pending the ascertainment of its cost or value. The section applies only when there is an incomplete entry of merchandise, or an entry without the specification of particulars, or when the merchandise has been damaged during the voyage. Do the conditions exist to bring the case at bar within the purview of this statute? The merchandise has not been damaged during the voyage. Speaking entirely independent of the act of May 1, 1876, there is an incomplete entry and an entry without the specification of particulars within the meaning of that language as used in section 2926. The act of May 1, 1876, modifies all other acts with reference to the entry of merchandise of the character therein provided for. It is known as the packed-package act, and its purpose seems to have been to make special provision for the entry of packed packages. It authorizes the entry of such packages without an invoice, and states what that entry shall contain. It legalizes an incomplete entry when made of such merchandise as is therein referred to. Can it be that, notwithstanding this, section 2926 of the Revised Statutes applies? To hold this would be in effect to say that the importer who enters his merchandise in strict compliance with one law is to have imposed upon him a burden not imposed upon the importer who enters his merchandise in strict compliance with another law.

Section 2926 is not a penal statute; the charge for storage and other expenses incident thereto which is therein provided for is intended to reimburse the Government for expense necessarily incurred by reason of the failure of the importer to make entry of his merchandise in such a way as the law directs. It operates, however, upon the importer as a penalty for his failure to enter his merchandise as required by law, and if we were to hold that where merchandise was entered in compliance with the act of May 1, 1876, the charges and costs provided for in section 2926 could yet be imposed, it would be to penalize the importer who had in every respect complied with the law. This, we think, is not the intention of the section and is repugnant to those principles of justice which lie at the foundation of all law. We think, therefore, if the entry of a packed package is made in substantial compliance with this act, it can not be said to be an incomplete entry or an entry without the specification of particulars. The entry of the merchandise in the case at bar, being made in compliance with the act, was therefore not incomplete; was not without

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the specification of particulars, for it specified such particulars as the law required; nor was it an entry of merchandise damaged during the voyage.

We think it also doubtful if the fee or charge complained of herein is an expense incident to the removal or storage of the merchandise. The method adopted in the treatment of these packed packages in the administration of the customs laws, as the same would appear from the testimony of the acting deputy collector at the port of New York, is substantially as follows: When a packed package arrives it is ordered to the collector's sample office and sent from there to the appraiser's sample office, where the free packages are separated from the dutiable ones, the free packages being at once delivered to the consignee and the dutiable ones held to await entry and subsequent examination by the appraiser. The entry being made in accordance with the provisions of the act of May 1, 1876, and the merchandise examined and appraised, it is then liquidated, the duties paid, the fee herein complained of exacted, and the merchandise delivered to the consignee. There is no dispute as to these packages being entered in substantial compliance with the act of May 1, 1876. The acting deputy collector testified, in effect, that they were. The same witness testified that the charge in question in this case was originally established to pay the expenses of the sample office, which is maintained for the benefit of the importer, and that such charge was regulated by the Treasury Department by instructions given in 1882.

We are therefore led, we think unerringly, to the conclusion that the charge or fee complained of in this case is not such as is authorized and provided for in section 2926. There being no other statute upon which it could be based, it therefore follows that it is a fee exacted without authority of law. The fee is undoubtedly a charge made to defray the expenses of special services rendered to facilitate and aid the importers of packed packages in securing the prompt delivery of their goods, and we think there is little doubt that for these services the Government might make a reasonable charge by way of fee to be paid upon the entry or delivery of the goods. Congress, however, is the only branch of the Government that would have power to authorize this charge. The special service that is rendered is incident to the proper administration of the act of May 1, 1876, and, in the absence of a law to the contrary, the expense of this, like the expense of the administration of all laws, must be borne by the Government. In Acker, Merrall & Condit's case, G. A. 5689 (T. D. 25331), this Board, in discussing a charge for storing merchandise detained under the so-called pure-food law, said:

Undoubtedly, under the police power of the Federal Government all merchandise brought in from other ports may be detained for such examination as is necessary to guard the public health, welfare, and safety, and we are not prepared to say that the

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expense of this examination might not be imposed upon the importer. But this, like the examination itself, must be under express provision of the statute. We know of no general provision of the law which would authorize the imposition of the expense of this charge upon the importer and the specific provision quoted above, under which this examination is made, being, as it is, one of several items for which there is a specific appropriation, would leave at least a reasonable inference that the purpose and intention of Congress was that all expense in connection with the examination therein provided for should be borne by the Government. But whether this be true or not, we can not see that it in any way differs from the ordinary administration of a public law, the expense of which is uniformly borne by the Government, unless there is express provision for imposing this expense upon some party in interest.

This case was appealed to the United States circuit court and the decision of the Board there sustained. United States *v.* Acker (133 Fed. Rep., 842; T. D. 25812).

As to three items stated in the protests here under consideration, the Government's representative questions the jurisdiction of this Board for the reason that the goods embraced in these three items were never entered at the custom-house. The fact is that the items in question cover articles entitled to free admission, which, as stated above, under the practice prevailing in the administration of the customs, immediately upon the ascertainment of the fact that they are entitled to free admission, are delivered to the consignee, but upon each of these packages a fee of 20 cents was charged. The Government's contention is that, under section 14 of the act of June 10, 1890, the Board of General Appraisers has jurisdiction only to hear and decide protests relating to the rate and amount of duty upon such merchandise as has been regularly entered. This view we think narrows the purview of section 14 to a degree not warranted by the language used in the section. So much of section 14 as is pertinent reads as follows:

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, *and as to all fees and exactions of whatever character* (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee or agent of such merchandise, or the person paying such *fees, charges and exactions* other than duties, shall within ten days after but not before such ascertainment and liquidation of duties, as well in cases of merchandise entered in bond as for consumption, *or within ten days after the payment of such fees, charges and exactions*, if dissatisfied with such decision, give notice in writing to the collector. * * *

The italics are ours, and we think the words italicized serve to show that the section provides not only for a protest against the action of the collector as to the rate and amount of duty placed by him upon imported merchandise, which protest shall be filed within ten days after the ascertainment and liquidation of duties upon said merchandise, but that it also provides for a protest against the action of the collector in imposing fees, charges, and exactions, and that when it is sought to protest against his action in this respect the

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protest shall be filed within ten days after the payment of such fees, charges, and exactions. The protests in these cases were filed within the ten days so provided.

The exact question here presented has, we believe, never been passed upon by either the Board or the courts. In *In re* Chichester (48 Fed. Rep., 281) the court held that the Board of United States General Appraisers had no jurisdiction to review the action of the collector in determining what duty was to be paid upon merchandise seized and libeled for forfeiture in the Federal courts, and that that jurisdiction was confined to reviewing the action of the collector as to the rate and amount of duty on imported merchandise lawfully entered and regularly invoiced and appraised. The court's language in that case must be construed as relating entirely to that part of section 14 which gives the Board jurisdiction to review the action of the collector as to the rate and amount of duties upon imported merchandise, and the question as to the Board's jurisdiction to review the action of the collector in imposing fees and exactions was not before the court and could not arise from the facts of the case.

The case of Lloyd Brothers, G. A. 6468 (T. D. 27680), also had under consideration the jurisdiction of the Board to review the decisions of the collector as to the rate and amount of duties on imported merchandise, and followed the decision of the court in Chichester's case (*supra*). The question of the Board's jurisdiction to review the action of the collector in imposing fees and exactions was not before the Board.

As pointed out, section 14, in our judgment, provides two distinct and separate acts of the collector against which protest may be filed, first, his decision as to the rate and amount of duties upon imported merchandise, and, second, his decision upon fees and exactions. We think this is made perfectly clear by the fact that the limitation of time wherein protests may be filed is separately stated. A protest against the decision of the collector as to the rate and amount of duty must, under the section, be filed within ten days after, but not before the ascertainment and liquidation of the duties. A protest against fees and exactions must be filed within ten days after the payment of such fees, charges, and exactions. To hold that the Board had not jurisdiction in such a case as that here presented would, in our judgment, be in conflict with the express language of section 14 of the act of June 10, 1890.

We hesitate to disturb a practice of such long standing, but neither usage nor custom, however ancient, can render legal a fee or charge in the administration of customs that is not authorized by statute. The protests are sustained and the collector directed to reliquidate the entries in accordance with the views herein expressed, and refund to the importers the fees collected.

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(T. D. 27963—G. A. 6553.)

Iron and nickel sheets welded together.

1. Sheets of metal composed of alternate layers of iron and nickel, welded together and then rolled down to the required thinness, are dutiable as articles of metal not specially provided for under the provisions of paragraph 193, tariff act of 1897, and not as iron sheets galvanized or coated with other metals under paragraphs 131 and 132 of said act.

2. The last-named paragraph applies only to sheets on which the coating has been produced by galvanizing, dipping, electrolysis, or similar process.—G. A. 3819 (T. D. 17944); G. A. 5754 (T. D. 25496); G. A. 5879 (T. D. 25892), and Boker *v.* United States (suit 4041; T. D. 27502) cited and followed.

United States General Appraisers, New York, February 26, 1907.

In the matter of protest 191504 of Hermann Boker & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of sheets of metal composed of a layer of iron between two layers of nickel, all rolled or squeezed together. Duty was assessed on the goods at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, as articles of metal not specially provided for; and they are claimed to be dutiable properly under paragraph 131, "at the appropriate specific rate according to gauge," with two tenths cent per pound for the coating under paragraph 132.

At the hearing the only witness called was the importer himself. He testified that the sheets are made by placing a nickel plate on top of an iron plate, welding them together and then passing them through the cold rolls until they are rolled down to the required thinness. He further testified that they have no trade designation, that he is the only importer of them, and that they are ordered indiscriminately as nickel-plated, nickel-coated, and nickel-covered iron sheets. The nickel portion of the articles is worth from four or five times as much as the iron part.

The question before us is the same in principle as that which was decided adversely to the contention of the same importer in G. A. 5754 (T. D. 25496), which decision is as follows:

The merchandise in question consists of certain metal sheets having one surface of copper and the other of nickel, which are made by placing said sheets on a sheet of iron and then rolling them down to the required thickness, the pressure of the rolls serving to weld or roll all the sheets together into one sheet. Duty was assessed on the same at the rate of 45 per cent ad valorem under the provisions of paragraph 193 of the act of July 24, 1897, as manufactures of articles composed of metal not specially provided for, and the importers claim that the merchandise is properly dutiable at the rates provided for in paragraphs 131 and 132 as sheets of iron or steel, common or black, coated with other metals.

This article is manufactured after the manner of manufacturing so-called rolled gold, and the question is, Is it coated metal or a manufacture of metal? While it may be true that plating is a species of coating, yet it can hardly be said that welding one

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plate on top of another is coating, either in a trade or tariff sense. To fall within the provisions of paragraph 132, a plate must be produced in a manner *ejusdem generis* with the methods therein enumerated—that is, either by galvanizing or dipping. We believe there can be no doubt that welding one plate onto another is not such method, nor, in fact, coating in any sense. This view agrees with the trade view, as disclosed by the importer's own testimony. He testified:

In the trade, under plated ware, or plated articles, it is generally understood that they are plated by electrotype process, electrolysis. When selling this metal—and they call it plated metal—we frequently call their attention to the fact that it is not plated metal as they understand it—that is, produced by electrolysis—but that it is sheets of iron or steel coated with a heavy coating of metals produced by another process.

The precise question raised here was passed upon by this Board under the act of 1894 adversely to the importers in G. A. 3819 (T. D. 17944) upon a protest filed by Hermann Boker & Co., the importers in the case at bar, and the principle there laid down has been uniformly observed for years in the classification of said merchandise.

We find—

1. That the merchandise in question is not sheets of iron or steel, common or black, coated or galvanized with zinc, spelter, or other metals.

2. That the merchandise in question consists of articles composed of metal not specially provided for.

The protest is overruled and the decision of the collector affirmed.

On the importer's own testimony it seems evident that these sheets are not what are generally understood as plated or coated sheets. They are quite as much nickel sheets backed with iron, for the purposes of strength and economy, as they are iron sheets covered with nickel.

Similar goods have been passed upon in other decisions. In G. A. 3819 (T. D. 17944), a case which arose under the tariff act of 1894, strips of alloy and iron welded together were held to be dutiable as manufactured articles of metal. The Board said in part:

These strips are not common or black iron, or steel sheets or plates, hoop, band, or scroll iron or steel; and if this combination of metals was in the form of sheets, then it may well be questioned if it is the sheet metal galvanized or coated in the manner specified in paragraph 119, which undoubtedly applies to the processes of depositing a coating of metal upon common or black sheets of iron or steel by a galvanic process, or by dipping, and not by welding or brazing.

From a decision dated May 17, 1905, which followed the ruling in G. A. 5754 (*supra*), the importers took an appeal, but subsequently consented to an affirmance of the Board's decision. (Suit 4041; T. D. 27502.)

A question closely analogous to that in the case at bar was passed on in G. A. 5879 (T. D. 25892), where a wire that was formed by forcing an iron core through a nickel tube was held to be a wire not specially provided for, and not an iron wire coated with nickel. This decision was appealed and was affirmed by the circuit court (140 Fed. Rep., 115; T. D. 26451), and by the circuit court of appeals (145 Fed. Rep., 1022; T. D. 27192), on the ground of the insufficiency of the protest. Note G. A. 6414 (T. D. 27544).

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On the testimony we find that the sheets are not sheets of iron galvanized or coated with other metals, and that they are sheets of iron and sheets of nickel welded together face to face and cold rolled to the required thickness. Not being provided for elsewhere, they are dutiable properly under paragraph 193 as assessed. The protest is overruled and the decision of the collector affirmed.

(T. D. 27964—G. A. 6554.)

Dirt in nuts.

SHELLED NUTS—ALLOWANCE FOR DIRT.

In assessing duty on shelled nuts provided for in paragraphs 269 to 272 of the present tariff act of 1897, no allowance should be made for dirt or other impurities found in the nuts on importation, at least in the absence of evidence of abnormal quantities of such foreign matter or a variation from the ordinary wholesale condition.—Following Spencer *v.* United States, C. C. A. (T. D. 27877), which affirmed Spencer *v.* United States (143 Fed. Rep., 916; T. D. 26974) and *In re* Spencer, G. A. 5943 (T. D. 26090).

United States General Appraisers, New York, February 27, 1907.

In the matter of protests 10974*h*, etc., of Spencer & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

SOMERVILLE, *General Appraiser:* The importations consist of various kinds of nuts shelled, which are variously provided for in the tariff act of 1897, paragraphs 269 to 272, inclusive, and which are made dutiable by the pound. Duty was assessed upon the articles on the basis of the weight as returned by the United States weigher. The importers claim that in assessing duty on these goods only the weight of the nuts themselves should be taken, free from dirt, impurities, or foreign substances contained in them. Or at least a fair average or commercial deduction should be made for such foreign substances from the assessed weight.

In the case of Spencer & Co., G. A. 5943 (T. D. 26090), it was held by the Board that in assessing duty on shelled almonds, walnuts, and filberts, or other nuts, which are made dutiable by paragraphs 269 and 270 of the tariff act of 1897 at so much per pound, no allowance should be made for dirt or other impurities contained in the goods, claimed to be about 3 per cent. It was held by the Board that the case was analogous to that settled by the circuit court of appeals for the seventh circuit, in the case of United States *v.* Reid, Murdock & Co. (120 Fed. Rep., 242; 56 C. C. A., 538), which affirmed in principle the decision rendered by the majority of this Board in *In re* Hills, G. A. 4655 (T. D. 22005). It was held by the court in that case that imported currants packed in casks, which were made dutiable under

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paragraph 264 of the present tariff act at 2 cents per pound, were dutiable at this specific rate without any deduction on account of dirt or other impurities contained in the merchandise. In that case an application for a writ of certiorari was denied by the United States Supreme Court (190 U. S., 560; 23 Sup. Ct. Rep., 855). This action in effect amounted to an affirmance of the decision of the lower court. The Board observed as follows:

We are inclined to think that the principle settled in the currant case must govern our ruling in this case for the following reasons: First, because the amounts of alleged impurities in the various importations in question are not proved with sufficient certainty; secondly, because no definite and uniform custom of trade is shown to exist by which allowance is made for such impurities; and, third, because it would be impracticable for collectors of customs and appraising officers to ascertain the precise amount of impurities contained in these various importations in the discharge and prompt administration of the duties of their offices, especially where no specific percentages are stated on the invoice.

This decision was affirmed by the circuit court for the southern district of New York in Spencer *v.* United States (143 Fed. Rep., 916; T. D. 26974). It was held that no allowance should be made for impurities found in imported nuts, in the absence of evidence showing abnormal quantities of foreign matter or a variation from the ordinary wholesale condition.

On appeal being taken to the circuit court of appeals, second circuit, this decision was affirmed *per curiam* without opinion. Spencer *v.* United States (T. D. 27877). The importations in question all fall within the purview of this decision.

The protests are accordingly all overruled and the decision of the collector affirmed in each instance.

(T. D. 27965—G. A. 6555.)

Almond meal not a toilet article.

Almond meal which must be submitted to one or more processes of sifting to remove gritty particles, and have added thereto alkali, flour, and perfume before it can be used as an application to the skin, *Held* dutiable at the rate of 20 per cent ad valorem under section 6, tariff act of 1897, as an unenumerated manufactured article.—G. A. 6165 (T. D. 26752) cited and distinguished.

United States General Appraisers, New York, March 4, 1907.

In the matter of protests 217958, etc., of Geo. Lueders & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers; SHARRETTS, G. A., absent).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests is almond meal. Duty was assessed thereon at the rate of 50 per cent ad valorem under the provisions of paragraph 70 of the tariff act of 1897. Various alternative claims are

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made for rates of duty lower than that assessed, among them being one for 20 per cent ad valorem under the provisions of section 6 of said act.

The appraiser in his special report on the protest states that this article "is identical in character to that the subject of G. A. 6165 therein held to be dutiable as a toilet article under paragraph 70 of the tariff act at 50 per cent ad valorem."

In said G. A. 6165 (T. D. 26752) the Board said:

The only witness called on the hearing was a member of the importing firm. He testified that the merchandise was produced by powdering the cakes which remain after expressing the oil from almonds or peach kernels; that the only use which he knew the merchandise to have was as an application to the face, hands, and feet, and that the purposes of such use were to soften the skin and prevent chapping.

In these cases, however, the evidence shows a different state of facts. It is clearly established that the almond meal here involved is not ready for use as an article for the toilet. Manifestly, its ultimate use is as an application to the skin of the face, hands, and feet, but before it will be fitted for such use it must be submitted to one or more processes of sifting to remove the gritty particles, and then have added thereto an alkali, flour, and certain perfumes. It is apparent therefore that, in the condition imported, this merchandise is not a toilet article and there can be no warrant for assessing duty thereon as such. When ready for such use as an article for the toilet its condition will have been materially changed.

We have examined the official sample in G. A. 6165 (*supra*) and find it to be a much finer article than that which we are now considering, but even if from lack of evidence a mistaken conclusion was reached in that case, that fact would not justify repeating it here.

The claim for duty at 20 per cent ad valorem under section 6 is sustained. In all other respects the protests are overruled and the decisions of the collector modified accordingly.

(T. D. 27966—G. A. 6556.)

Ornamental leaves—Artificial leaves and flowers.

Leaves preserved in their natural state and used for ornamental or decorative purposes are dutiable at 50 per cent ad valorem under the provisions of paragraph 425, tariff act of 1897.—Kreshower *v.* United States (T. D. 27826); G. A. 5800 (T. D. 25630) and Abstract 7780 (T. D. 26655) followed.

United States General Appraisers, New York, March 5, 1907.

In the matter of protests 161529, etc., of D. Spero Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests was variously returned by the appraiser as

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"artificial leaves," "ornamental leaves," and "artificial flowers," and assessed for duty at the rate of 50 per cent ad valorem under the provisions of paragraph 425. Various alternative claims for classification other than that made by the collector are made.

When these protests were called for hearing they were, at the request of protestants, suspended pending the determination in Kreshower *v.* United States (suit 4088). Said suit having been determined adversely to protestants (T. D. 27826) and the issue here presented being by such request for suspension concededly the same, the protests are overruled and the decision of the collector affirmed in each case. See G. A. 5800 (T. D. 25630); Abstract 7780 (T. D. 26655).

(T. D. 27967—G. A. 6557.)

Reimported automobile—Ordinary repairs.

1. HOUSEHOLD EFFECTS—AUTOMOBILE.

Automobiles may properly be classed as "household effects" under paragraph 504, tariff act of 1897.

2. SAME—USE ABROAD ONE YEAR—CONTINUOUS USE.

Paragraph 504, tariff act of 1897, relating to household effects "used abroad * * * not less than one year," does not require that such use shall be continuous. If the use has been for several different periods aggregating a year, the conditions of the law are satisfied.

3. SAME—ORDINARY REPAIRS MADE WHILE ABROAD.

An automobile upon which merely ordinary repairs have been made abroad, simply for the purpose of keeping the machine in proper condition for ordinary use, which repairs amounted to less than 5 per cent of the cost of the machine, and did not substantially affect the identity of the article as being the same in character and condition as when exported, is free of duty under paragraph 504 of the tariff act, if used abroad not less than one year, and not intended for any other person or persons, nor for sale.—Hillhouse *v.* United States (T. D. 27831) distinguished.

United States General Appraisers, New York, March 5, 1907.

In the matter of protest 220453 of American Express Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; HAY, G. A., absent).

SOMERVILLE, *General Appraiser:* The article in question consists of an automobile shown to be the property of Mrs. Tyler Morse, formerly Mrs. Harry Black. The vehicle was originally purchased in Paris, between the first and middle of April, 1904, at a cost of about 12,000 francs. It was imported November 10, 1904, and was appraised at $2,347, and duties amounting to $1,056.15 were paid without protest. It was exported June 6, 1905, having been properly registered

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and certificate obtained. The article was reimported November 29, 1905, when it was again appraised at $2,347, and duties amounting to $1,056.15, as before, were paid. This assessment was made under protest, which is now the one before the Board for decision.

The testimony taken at the hearing shows that the car was first used abroad for about seven months and ten days, and on the second occasion about five months and twenty-nine days, or for a total period of over thirteen months. The importer claims that the vehicle is a household effect, and that it was actually used abroad for not less than one year, and, not being intended for any other person or persons, or for sale, was free of duty under paragraph 504 of the tariff act of 1897, which reads as follows:

> 504. Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries, all the foregoing, if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.

In the case of Hillhouse *v.* United States, decided by the circuit court of appeals for the second circuit, and reported by the Treasury Department in T. D. 27831, it was held by that court that said paragraph 504, relating to household effects "used abroad * * * not less than one year," does not require that such use shall be continuous, and that any use for several different periods aggregating a year would satisfy the conditions of the law. We accordingly find from the testimony that the article in question was used abroad by the owner for not less than one year, and that it was not intended for any other person or persons or for sale.

The main question for consideration of the Board arises from the fact that certain repairs were made upon the machine by the owner while it was in use by her in Paris. It appears from the evidence that the car was painted and one or two springs put in, in place of ones which were bent or broken. The body of the car was shown to have been scratched so as to require repair by the use of paint. The entire cost of repairs is shown not to have exceeded 520 francs.

In the Hillhouse case first decided by the circuit court in 142 Federal Reporter, 303, and reported by the Treasury Department in T. D. 27003, it was observed by Judge Hazel, as follows:

> If the repairing had consisted simply of painting and adjusting parts of the machine which had become impaired and defective by reason of its ordinary use, a more liberal construction of the provision of the tariff act would be justified.

In our judgment, the repairs put on this machine were merely ordinary repairs, such as would keep it in proper condition for ordinary use. The repairs in question do not appear to have amounted to as much as 5 per cent of the cost of the machine.

Under the ruling of the circuit court of appeals in the Hillhouse case (*supra*) and the decision of the Board in the case of Pulitzer,

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G. A. 3318 (T. D. 16730), and the authorities there cited, an automobile is unquestionably a household effect within the meaning of that phrase as used in said paragraph 504 of the present tariff act. It is unnecessary to consider the other questions argued in the brief of counsel. It is enough to say that in our judgment the slight repairs made upon the machine would not justify us in refusing to admit it free of duty under said paragraph 504, as claimed in the protest. The repairs in question, it may be added, did not substantially affect the identity of the article as being the same in character and condition as when exported.

The protest is sustained and the decision of the collector reversed, with instructions to reliquidate the entry accordingly.

(T. D. 27968.)

Abstracts of decisions of the Board of General Appraisers.

No. 14580.—Lenses.—Protest 225483 of Holcombe & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

G. A. 6086 (T. D. 26541) followed, relating to lenses.

No. 14581.—Chemical Glassware.—Protest 211287 of Williams, Brown & Earle against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6429 (T. D. 27584), relating to chemical glassware.

No. 14582.—Decorated Earthenware—Decorated Glassware.—Protests 223446, etc., of Bailey, Banks & Biddle Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

The protests related to vases with bronze mountings, which were classified under paragraph 100, tariff act of 1897, relating to decorated glassware. Assessment affirmed on the authority of Gallenkamp *v.* Rachman (147 Fed. Rep., 769; T. D. 27090).

No. 14583.—Spangled Articles.—Protest 214166 of H. B. Claflin Company, protest 231339 of Judkins & McCormick Company, and protests 107899, etc., of E. A. Morrison & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinions by Sharretts, G. A.

Protests overruled on the authority of G. A. 6323 (T. D. 27240), relating to spangled articles.

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No. 14584.—PINS—ORNAMENTS.—Protests 225258, etc., of B. Altman & Co. *et al.* and protests 226691, etc., of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinions by Sharretts, G. A.

Protests sustained on the authority of G. A. 6374 (T. D. 27382) and G. A. 6376 (T. D. 27390), relating to pins and ornaments.

No. 14585.—PINS—JEWELRY.—Protest 221925-23282 of Butler Brothers and protest 221675-23239 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinions by Sharretts, G. A.

The protests related to pins, which were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897. Note G. A. 6376 (T. D. 27390).

No. 14586.—MOVEMENTS FOR TOY MUSIC BOXES.—Protest 216437 of Fr. Bergner & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

The Board overruled the importers' contention that movements for toy music boxes were dutiable as toys under paragraph 418, tariff act of 1897. Abstract 5566 (T. D. 26248) followed.

No. 14587.—JEWELRY.—Protest 213078 of W. C. Schoenemann and protest 170942 of John L. Vandiver against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinions by Sharretts, G. A.

The importers objected to the classification of the merchandise as jewelry. Assessment affirmed. Note G. A. 6495 (T. D. 27777).

No. 14588.—JEWELRY.—Protests 213997, etc., of C. E. Rippe & Co. against the assessment of duty by the collector of customs at the port of New York.

Same as No. 14587 (*supra*).

No. 14589.—IMITATION PRECIOUS STONES.—Protest 226704 of B. Ulmann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6380 (T. D. 27420), relating to imitation precious stones.

No. 14590.—ORNAMENTS.—Protest 55104 *b* of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of ornaments, was held dutiable as manufactures of glass under paragraph 112, tariff act of 1897, as claimed by the importers. Note G. A. 6130 (T. D. 26653).

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No. 14591.—VETERINARY SCALPELS—SURGICAL SAWS.—Protests 222216, etc., of F. A. Koch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; Howell, G. A., absent), February 26, 1907. Opinion by Fischer, G. A.

As claimed by the importers, the Board held veterinary surgeons' scalpels dutiable as manufactures of metal under paragraph 193, tariff act of 1897, and surgical saws under the provision in paragraph 168 for saws. Note Abstract 13855 (T. D. 27801).

No. 14592.—EXPOSED PHOTOGRAPHIC PLATES.—Protest 205523 of Underwood & Underwood against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), February 26, 1907.

FISCHER, *General Appraiser:* The merchandise consists of photographic dry plates of American manufacture, exposed abroad but not developed. The facts concerning the importation are briefly these: The protestant corporation, who are makers and sellers of stereographic views, made an agreement with one Chester, an American citizen and a public lecturer by profession, who was about to make a tour through Central and South America, under which they furnished him with a camera of American manufacture and a sufficient quantity of plates, both parties to have the right to use the photographs so obtained. Before returning to this country he shipped from Guayaquil 40 dozen of the plates which he had exposed, but not developed, which plates form the subject of this protest. The goods were entered at the cost price of the plates, and the appraising officer added an amount sufficient to equal the enhancement in value of the plates, which, in his judgment, had ensued by reason of their having been exposed. On appeal to reappraisement the advance made by the local appraiser was sustained in part, and the importers accepted the valuation thus fixed, which exceeded the entered value by more than 50 per cent. The seizure thus incurred was waived by the Secretary of the Treasury, and the importers were allowed to have the goods on payment of the additional duties required by virtue of the provisions of section 7 of the act of June 10, 1890. Duty at the rate of 45 per cent ad valorem under the provisions of paragraph 112, tariff act of 1897, as manufactures of glass, was assessed on the articles, and they are claimed in the protest to be free of duty under paragraph 483 as articles of American manufacture returned after having been exported without having been advanced in value or improved in condition by any process of manufacture or other means; or under paragraph 701 or 703; or, if dutiable, at 1⅛ cents per pound under paragraph 101, as common window glass; or at 20 per cent under section 6 as unenumerated manufactured articles; or at 25 per cent under paragraph 403, as photographs, or at 25 per cent as photographic dry plates under paragraph 458.

Taking up the claims *seriatim*, we hold that the increased valuation of the plates found on reappraisement in consequence of their having been exposed, which valuation was accepted by the importers and was not appealed from, is an effective bar to any claim for relief they make under paragraph 483; there is nothing before us to bring the importation within the purview of paragraph 701 or 703, and there has been no attempt at compliance with the regulations of the Secretary of the Treasury concerning importations made under said paragraphs; it is obvious that the plates are something more than common window glass, and it is equally obvious that they are not photographs. Further, inasmuch as they are made of glass and there is a provision in the law for manufactures of glass, they can not come under section 6 as "unenumerated" manufactured articles. The only remaining claim is that the goods are photographic plates, and this, we think, may well be allowed.

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The testimony shows that a dry plate does not become a negative until after it has been exposed and developed—both operations being necessary to form a negative—and that until it has been converted into a photographic negative by the developing process it remains a dry plate which has been exposed, it is true, but a dry plate nevertheless. When a sensitized plate is exposed to the light, we know that some change takes place in the chemical solution that covers the surface of the plate. What the precise nature of that change is we do not know. To the eye the plate looks the same and, in view of the testimony of a competent witness that a dry plate exposed but not developed is still a dry plate, we are of opinion that the importation in question falls fairly within the terms of paragraph 458.

In G. A. 5209 (T. D. 24012) certain photographic films, which had been exposed abroad but not developed, we held to be "still photographic films." In the case at bar the evidence shows that the vast majority of the plates which Chester took with him were absolutely ruined and of no value whatever on their return, owing partly to his unskillfulness in the use of the camera, and partly to his poor judgment, from a commercial standpoint, in the selection of the subjects of his pictures.

The claim under paragraph 458 is sustained and the decision of the collector modified to that extent. All other claims are overruled.

No. 14593.—Crucifixes—Shrine—Works of Art.—Protest 170836 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Waite, G. A.

The protest related to three crucifixes and a shrine carved in wood. As claimed by the importers, they were held free of duty under paragraph 703, tariff act of 1897, as works of art imported for presentation to a church. Note United States *v.* Ecclesiastical Art Works (142 Fed. Rep., 1038; T. D. 26945).

No. 14594.—Arrowroot Starch.—Protests 31726 *f*, etc., of Stallman & Fulton *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Middleton *v.* United States (T. D. 27749), relating to arrowroot starch.

No. 14595.—Dutiable Weight of Tobacco.—Protest 59866 *b*, etc., of S. L. Johns *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), February 26, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of Falk *v.* United States (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14596.—Wood Pulp—Countervailing Duty.—Protests 55423 *b*, etc., of John B. Heckendorn against the assessment of duty by the collector of customs at the port of Milwaukee. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), February 26, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 5592 (T. D. 25035) and G. A. 6445 (T. D. 27629), relating to the assessment of a countervailing duty on wood pulp.

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No. 14597.—Bronze Powder—Invoice Weight—"Pound."—Protest 223961 of Louis Dejonge & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Somerville, G. A.

The protest related to bronze powder, the invoice weight of which was stated in pounds. The question at issue was whether this meant German pounds, as held by the collector, or English pounds, as claimed by the importers. Protest sustained.

No. 14598.—Protest Filed Too Late.—Protest 201376 of Chan Chin Chen against the assesment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Hay, G. A.

The protest was dismissed because not filed within the time prescribed by law.

No. 14599.—Magnesia Rings.—Protest 226976 of D. S. Hesse & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 6486 (T. D. 27742), relating to magnesia rings.

No. 14600.—Smokers' Articles—Cigar Lighters.—Protest 223722 of Isaacs, Vought & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Hay, G. A.

On the authority of Abstract 13785 (T. D. 27785), the Board held cigar lighters to have been properly classified as smokers' articles under paragraph 459, tariff act of 1897.

No. 14601.—Petroleum Products.—Protest 222187 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of G. A. 6405 (T. D. 27507), relating to petroleum products.

No. 14602.—Protests Abandoned.—Protest 222641 of N. London and protests 222061, etc., of Zaloom, Maloof & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), February 26, 1907.

Protests abandoned; overruled.

No. 14603.—Protests Unsupported.—Protests 214168, etc., of H. B. Claflin Company *et al.* and protest 226983 of Hussa & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), February 26, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 14604.—Protest Unsupported.—Protest 226724 of F. Smith against the assessment of duty by the collector of customs at the port of Port Huron. Opinion by McClelland, G. A.

Same as No. 14603 (*supra*).

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No. 14605.—PROTESTS UNSUPPORTED.—Protests 225620, etc., of Dingelstedt & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; Howell, G. A., absent), February 26, 1907. Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 14606.—PROTEST UNSUPPORTED.—Protest 223859 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14605 (*supra*).

No. 14607.—PROTESTS UNSUPPORTED.—Protests 220553, etc., of McHutchison & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 26, 1907. Opinion by Hay, G. A.

Protests overruled for want of merit.

No. 14608.—PROTEST UNSUPPORTED.—Protest 223659 of Coroneos Brothers. Opinion by Somerville, G. A.

Same as No. 14607 (*supra*).

No. 14609.—COAL-TAR PREPARATION.—Protests 204620, etc., of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), February 27, 1907. Opinion by Lunt, G. A.

The merchandise was claimed to be free of duty under paragraph 524, tariff act of 1897, as dead or creosote oil. The Board held it to have been properly classified as a coal-tar preparation under paragraph 15.

No. 14610.—ALCOHOLIC MEDICINAL PREPARATION—LIQUOR FERRI ALBUMERNATI, DREES.—Protest 223735 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), February 27, 1907. Opinion by Lunt, G. A.

The protest related to an article invoiced as liquor ferri albumernati, drees, which was found to contain 23.3 per cent of absolute alcohol, and was held to have been properly classified as an alcoholic medicinal preparation under paragraph 67, tariff act of 1897.

No. 14611.—WOOL ORNAMENTS.—Protest 63721*f* of A. D. Matthews & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 27, 1907. Opinion by Lunt, G. A.

The protest related to ornaments, which the importers claimed to be dutiable as manufactures of wool under paragraph 366, tariff act of 1897. Protest sustained on the authority of G. A. 5664 (T. D. 25254).

No. 14612.—SEA MOSS.—Protests 222944, etc., of M. Herman & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClellend, General Appraisers), February 27, 1907. Opinion by McClelland, G. A.

G. A. 6464 (T. D. 27670) followed, relating to sea moss.

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No. 14613.—GALLILITH SHEETS.—Protests 221994, etc., of E. Oppenheim *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), February 27, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of G. A. 6514 (T. D. 27822), relating to gallilith sheets.

No. 14614.—SPLASH MATS.—Protests 195245, etc., of Theo. Ollesheimer & Bros. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), February 27, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Woolworth *v.* United States (T. D. 27853), relating to splash mat

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No. 14615.—MARBLE ALTAR.—Protest 186840 of Letzerich & Co. against the assessment of duty by the collector of customs at the port of Galveston. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 27, 1907. Opinion by Waite, G. A.

Protest sustained on the authority of United States *v.* Ecclesiastical Art Works (142 Fed. Rep., 1038; T. D. 26945), relating to marble altars.

No. 14616.—BAPTISMAL FONT—WORK OF ART.—Protest 143854 of Thos. S. Byrne against the assessment of duty by the surveyor of customs at the port of Nashville. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 27, 1907. Opinion by Waite, G. A.

A baptismal font was held free of duty as a work of art under paragraph 703, tariff act of 1897, as claimed by the importer. United States *v.* Ecclesiastical Art Works (142 Fed. Rep., 1038; T. D. 26945) followed.

No. 14617.—DUTIABLE WEIGHT OF TOBACCO.—Protests 116327, etc., of Benj. Labe & Sons *et al.* February 27, 1907.

Same as No. 14595 (*supra*).

No. 14618.—DUTIABLE WEIGHT OF TOBACCO.—Protests 63245 *b*–17857, etc., of Rothschild Sons Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. February 27, 1907.

Same as No. 14595 (*supra*).

No. 14619.—DUTIABLE WEIGHT OF TOBACCO.—Protests 18332 *h*, etc., of I. Bijur & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. February 27, 1907.

Same as No. 14595 (*supra*).

No. 14620.—SAWED TALC.—Protest 222380 of D. M. Stewart Manufacturing Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 27, 1907. Opinion by Hay, G. A.

Sawed talc in pieces of uniform size and used in the manufacture of gas tips or burners, which were classified as an undecorated mineral substance under paragraph 97, tariff act of 1897, were held dutiable as unenumerated manufactured articles under section 6, as claimed by the importers. Note G. A. 5452 (T. D. 24737), G. A. 5521 (T. D. 24864), and United States *v.* Downing (201 U. S., 354; T. D. 27281).

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No. 14621.—PROTEST ABANDONED.—Protest 222254 of Reiss & Brady. February 27, 1907.

Same as No. 14602 (*supra*).

No. 14622.—PROTESTS ABANDONED.—Protests 225442, etc., of Kirkman & Vail *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. February 27, 1907.

Same as No. 14602 (*supra*).

No. 14623.—PROTEST ABANDONED.—Protest 232097 of H. J. Carson against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), February 27, 1907. Opinion by McClelland, G. A.

Protest abandoned; overruled.

No. 14624.—PROTESTS UNSUPPORTED.—Protest 219641 of A. E. Bockmann and protest 222360 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), February 27, 1907. Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 14625.—PROTEST UNSUPPORTED.—Protest 223448 of H. Bayersdorfer & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14624 (*supra*).

No. 14626.—PROTEST UNSUPPORTED.—Protest 219203 of Sucs. de L. Villamil & Co. against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 14624 (*supra*).

No. 14627.—PROTESTS UNSUPPORTED.—Protests 216537-22334, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers).

Same as No. 14624 (*supra*).

No. 14628.—PROTESTS UNSUPPORTED.—Protests 223508, etc., of Apollinaris Agency Company, protest 218208 of Dennison & Sons, protest 223881 of Hensel, Bruckmann & Lorbacher, and protest 212810 of L. Straus & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), February 27, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 14629.—PROTEST UNSUPPORTED.—Protest 221921-23301 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14628 (*supra*).

No. 14630.—PROTESTS UNSUPPORTED.—Protests 210421, etc., of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14628 (*supra*).

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No. 14631.—PROTEST UNSUPPORTED.—Protest 226810 of American Express Company. February 28, 1907.

Same as No. 14624 (*supra*).

No. 14632.—PROTEST UNSUPPORTED.—Protest 229732 of Collins & Fairbanks Company against the assessment of duty by the collector of customs at the port of Boston. February 28, 1907. Opinion by Lunt, G. A.

Same as No. 14624 (*supra*).

TREASURY DEPARTMENT, *March 6, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 27969.)

Wood flour.

NAIRN LINOLEUM COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 21, 1907. Suit 4230.

1. WOOD FLOUR—PULP—WASTE—"MANUFACTURE."

So-called wood flour, made by grinding wood, is not dutiable as "wood pulp" under paragraph 396, tariff act of 1897, nor as "waste" under paragraph 463, but as a manufacture of wood under paragraph 208.

2. SAME—MANUFACTURES OF WOOD—EJUSDEM GENERIS.

Paragraph 208, tariff act of 1897, relating to "house or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood," was intended to cover all finished manufactured wooden articles, however different they may be in nature or appearance from the "house or cabinet furniture" there enumerated; therefore, wood flour, a completed product prepared for use, is not to be excluded from the provision for "manufactures of wood" on the principle of *ejusdem generis.*

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6325 (T. D. 27242), affirming the assessment of duty by the collector of customs at the port of New York.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* This appeal brings up for review a decision of the General Appraisers declaring an article commercially known as "wood flour" to be dutiable under paragraph 208 of the tariff act of 1897 as a "manufacture of wood." This substance is the same as received consideration in Goldman *v.* United States (87 Fed. Rep., 193). The testimony shows that it is produced by grinding in an appropriate machine containing millstones, "waste wood, scrub wood, second growth timber." Before being fed into the mill the wood is reduced to small pieces either by breaking or cutting. The substance when completed is perfectly dry and of about the consistency of meal.

The importer claims that it should have been assessed under paragraph 463 as waste, as was ground cork in Gudewill *v.* United States (142 Fed. Rep., 214; T. D. 25917), the testimony in which case is submitted as an exhibit in this proceeding. In the ground-cork case it was clearly shown that the only purpose of grinding the cork was to put it in convenient shape for transportation, and it was also shown that the cork so ground distinctly came within the meaning of the word "waste" as adopted in Standard Varnish Works *v.* United States (59 Fed. Rep., 456). It also appeared

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that the ground cork was principally used for the manufacture of linoleum, and to fit it for that purpose it had to be "reground, pulverized, and mixed with other materials." The wood flour under consideration is already prepared for use and is a completed product.

The importer claims in the alternative under paragraph 393 that the substance is known as "wood pulp." It does appear to be sometimes called wood pulp by those who sell it in this country, but the evidence falls far short of establishing any general commercial usage sufficiently clear to overthrow the decision below.

Paragraph 208 enumerates "house or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood * * * not specially provided for." Under this language the rule of *ejusdem generis* is invoked and claim made that a substance such as wood flour should not be put in the same category with furniture. The article is undoubtedly of wood, and it is a finished manufacture, and it is not a waste or by-product. Paragraph 208 is the omnibus or catch-all clause of the wood schedule in the tariff, and appears to me to be intended to cover all finished manufactured wooden articles, however different they may be in nature or appearance from "house or cabinet furniture."

The decision of the appraisers is affirmed.

(T. D. 27970.)

Rotten fruit.

UNITED STATES *v.* COURTIN.

U. S. Circuit Court, Southern District of New York. February 21, 1907. Suit 4261.

ROTTEN FRUIT—FRUIT DESTROYED BY HEALTH OFFICERS—NONIMPORTATION.

The rotten portions of imported fruit, which are condemned by local health authorities after the issuance of a tropical permit of delivery, but while the merchandise is being unloaded, *Held* not dutiable. The law is complied with if the Government receives duty on the entire amount of fruit which comes into the country as such.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as G. A. 6356 (T. D. 27324), reversed the assessment of duty by the collector of customs at the port of New York on fruit imported by Courtin & Golden. Note T. D. 27353, directing the application for review.

D. Frank Lloyd, assistant United States attorney, for the United States.

Henry S. J. Flynn, for the importers.

HOUGH, *District Judge:* Certain pineapples in crates having been brought into the United States by the appellees, a considerable portion of the same were destroyed by a representative of the health department of the city of New York as not being "fruit * * * sound, wholesome, and safe for human food" (sanitary code of New York City, sec. 42). The method of condemning the fruit was to examine each crate, and if a considerable portion of the contents thereof appeared to be decayed, the whole crate was condemned and the ship upon which it was found required to convey the same again to sea and dump it overboard. This condemnation took place while the goods were being unloaded, and after a "tropical permit" for the unloading thereof and delivery to the importers had been granted by the custom-house. This appeal raises the point whether any rebate or reduction in duties should be allowed to the importers, inasmuch as the pineapples in question were freed from customs supervision by the granting of the "tropical permit" above referred to. The evidence leaves it undoubted that no portion of the condemned goods ever passed into the actual control of the importers or became a subject of commerce within the United States.

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The action of the health department of this city clearly was a lawful exercise of police power, and, in my opinion, this case is entirely within the doctrine of Lawder *v.* Stone (187 U. S., 281). The facts in that case were indeed quite different, but the doctrine as interpreted in Stone *v.* Shallus (C. C. A., 4th circuit, 143 Fed. Rep., 486; T. D. 27133) is directly applicable. In the Shallus case the importation was of oranges in boxes, and "the shortage by rot was not discoverable or discovered until those boxes were opened under the supervision of the Government inspector." I think it makes no difference whether the rot was discovered under the supervision of a Government inspector or under the lawful supervision of an inspector of the health department, as long as it was discovered before the rotten article had passed into the actual control of the importer. Before these pineapples could be lawfully used by the importer they had to pass not only the Federal customs officers, but also the lawful police authorities of the city of New York, each standing at the portal of the country and each authorized to forbid admission. What was dutiable in the Shallus case (*supra*) was "pounds of oranges imported;" what was dutiable in this case was packages of pineapples, and if the Government received "the full duty leviable upon the entire [number of packages of pineapples] which actually came into the country as such," I think the law is complied with.

The decision of the Board of Appraisers is affirmed.

(T. D. 27971.)

Fur waste.

UNITED STATES *v.* HATTERS' FUR EXCHANGE.

U. S. Circuit Court, Southern District of New York. February 21, 1907. Suit 4266.

1. FUR WASTE—COMBINGS.

So-called hares' combings, consisting of loose or dead hair removed in cleaning skins, and used as an adulterant in the manufacture of cheap hats, but requiring further treatment for that use, are classifiable as "waste" under paragraph 463, tariff act of 1897, rather than as furs "prepared for hatters' use," under paragraph 426, or as "furs, undressed," under paragraph 561.

2. APPEAL—ASSIGNMENTS OF ERROR—CONTENTION NOT SPECIFIED.

Certain merchandise was claimed by the importers either to be free of duty or subject to duty at a less rate than that assessed; and the former contention was sustained by the Board of General Appraisers. The Government appealed under section 15, customs administrative act of 1890, assigning as error the Board's conclusion that the merchandise was free. *Held* that the merchandise might be held dutiable at the rate alternatively contended for by the importers, regardless of the fact that the assignment of errors did not more specifically suggest that classification.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision sustains the Government's appeal, but holds the merchandise dutiable at a less rate than was assessed.]

The Board of General Appraisers reversed the assessment of duty by the collector of customs at the port of New York. The Board's opinion will be found in Abstract 11309 (T. D. 27363). Note Wimpfheimer *v.* Erhardt (59 Fed. Rep., 451).

The Government's assignments of error, as stated in the application for review, read as follows:

And for the errors of law and fact in the decision of said Board herein complained of, your petitioner states:

1. That the said Board was in error in holding the merchandise in question to be free of duty under the provisions of paragraph 561 of the said act.

2. In not finding the same to be dutiable at 20 per cent ad valorem under paragraph 426 of the said act, as assessed.

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3. In finding as a matter of fact that the said merchandise is unfitted for use in hat making except as an adulterant.
4. In not finding the same to be furs not on the skin, prepared for hatters' use.
5. In sustaining the protest of the importers, and in reversing the decision of your petitioner, as collector of customs, in the premises.

J. Osgood Nichols, assistant United States attorney, for the United States.

Jacob Fromme (*B. A. Levett*, of counsel), for the importers.

HOUGH, *District Judge:* From the fur of the rabbit or hare there is removed, by a process of combing, loose or dead hair and fur. This is done to clean the skin or pelt preparatory to making it ready for use in the manufacture of hats.

The import under consideration consists of the material removed by the combing process above referred to. The testimony amply supports the proposition that it is known commercially as hares' combings or fur waste; and the method of obtaining it fairly classifies it as "waste"—that is, "superfluous or rejected material of the same kind as the material utilized for the intended purpose." United States *v.* Schroeder (93 Fed. Rep., 450). It is used as an adulterant in the manufacture of cheap hats, and as imported in this case requires further treatment before it can be used for even that humble purpose.

It was appraised by the collector as "furs not on the skin prepared for hatters' use," under paragraph 426 of the tariff act of 1897. On appeal the Board of General Appraisers held it to be "furs undressed" under paragraph 561, and from this finding the Government has appealed. In my opinion, the decisions both of the collector and of the Board of Appraisers were erroneous, and the article was clearly "waste not specially provided for" under paragraph 463.

As the assignments of error in this court specifically allege that the finding of the Board of Appraisers was erroneous, and as the protest of the importer alleged the applicability of paragraph 463 in the alternative, I find no difficulty under section 15 of the act of June 10, 1890, as amended, in reversing the decision of the Board of Appraisers and directing judgment in accordance with this opinion.

(T. D. 27972).

Baskets.

OLLESHEIMER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 21, 1907. Suit 3642.

BASKETS—CHIP.

The characteristics and method of production of chip considered, and certain baskets held not to be within the provision for manufactures of chip in paragraph 449, tariff act of 1897.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 2453 (T. D. 25499), affirmed the assessment of duty by the collector of customs at the port of New York on importations by Theodore Ollesheimer & Bros. The opinion filed by the Board reads as follows:

MCCLELLAND, *General Appraiser:* The merchandise covered by these protests consists of baskets which were returned by the appraiser as manufactures of willow and assessed for duty at the rate of 40 per cent ad valorem under paragraph 206 of the tariff act of 1897. Protestants claim, among other things, that the baskets are made in chief value of chip, and are dutiable at the rate of 30 per cent ad valorem under the provisions of paragraph 449 of said act. No evidence was submitted in support of any of the other claims specified in the protests, and the inference is that they were abandoned.

These baskets are of a great variety of price, make, shape, and composition. The record shows that, proceeding upon the theory that they were of the same class, and

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the question involved was the same, as passed upon in G. A. 5425 (T. D. 24811), under stipulation between counsel, a member of the importing firm examined the invoices covered by the protests and marked each line number of the baskets in question which he claimed to be in chief value of chip in blue pencil with the letter "A." Subsequently this witness was sworn and testified to his said action in so marking the line numbers on the invoices. In the course of his examination this witness testified:

Q. How are you able to recognize the particular kinds of baskets, Mr. Ollesheimer?—A. By stock numbers.

Q. You have the stock number constantly?—A. Yes.

Q. Never change?—A. No, sir.

Q. But the same numbers always represent the same items?—A. Yes. (Minutes of March 14, 1904, p. 4.)

The evidence of this witness was taken in the absence of any samples; and it being deemed insufficient, further evidence was taken on a later hearing, when various samples of the baskets were submitted to the witnesses while testifying. On this latter hearing another member of the protesting firm, of large experience in the basket trade, when asked if line number 150 always represented the same identical basket, answered: No, it does not. No. 150 is made entirely of chip willow, while the larger sizes sometimes are partly made at the bottom with a little whole willow. (Minutes of April 7, 1904, p 4.)

In this particular the statements of these two members of the protesting firm differ. This latter witness, when asked as to the component material of chief value in certain of the baskets, testified:

Q. Now, referring to such baskets as you say are indicated on your invoices by the numbers 150–0, 1, 2, 3, 4, and 5, and which you state consist of baskets all like Exhibit D, with the exception that at the bottom there may be more whole willow, can you state whether the chip or the whole willow is the component material of chief value in those baskets?—A. I think chip is the component material.

By Government counsel:

Q. You are not able to state positively?—A. No, sir. (*Id.*, p. 5.)

Asked as to the component material of chief value of line 838, Exhibit E, this witness gave answer that he was in doubt as to what was the component material of chief value. (*Id.*, p. 3.)

Robert F. Haussener, a witness called on behalf of the Government, who had been employed in the basket business for a period of twenty-one years, on being shown Exhibits A, B, C, and D, was asked:

Please look at Exhibits A, B, C, and D, and state whether you find any chip in any of these baskets, as that term was understood in the trade prior to 1897?

To which he answered:

No, sir. There is no chip of willow here.

The conclusion reached in G. A. 5495, to which our attention is directed, does not aid us in reaching a conclusion here since it is merely a question of the sufficiency of the proof offered in support of the protestants' claim.

It is a well-settled rule that the decisions of collectors on the classification of merchandise will not be disturbed unless it is shown by a preponderance of proof that there was error, and this, we think, the protestants have wholly failed to do. Erhardt *v.* Schroeder (155 U. S., 124); United States *v.* Rosenwald (67 Fed. Rep., 323); Walker *v.* Seeberger (88 Fed. Rep., 724). There is no such preponderance of proof here, and, therefore, the classifications made by the collector must stand.

Protests 90331*f*, 90332*f*, 90333*f*, 90334*f*, 90335*f*, and 90336*f* are sustained to the extent indicated by the reports of the appraiser filed therewith. With this exception the protests are overruled and the decisions of the collector affirmed.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The article under consideration consists of baskets which have been held by the Board of Appraisers to be "manufactures of willow," and therefore assessed under paragraph 206 of the tariff act of 1897.

The importers in this court rest their appeal upon the proposition that the chief component article of value in the baskets is "chip," and duty should therefore be levied under paragraph 449. This subject has been exhaustively considered *In re* Zinn, G. A. 6313 (T. D. 27208), and it appears to me that the present appeal is an endeavor to relitigate the matter upon additional testimony, making the third time that the point has been presented for consideration, the decision above cited having itself overruled *In re* Zinn G. A. 5495 (T. D. 24811).

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The importers contend that "chip" is an article produced from a piece of willow or other appropriate wood, and is first split into two or more parts by an instrument called a splitter; that each of the pieces so produced is then passed through a "shaver," which removes the pith adhering to the split willow; that on leaving the second instrument or machine the shaved pieces are passed through a "chipper," which removes the rough edges and produces a clean and flat wooden material of a uniform width.

Having thus defined "chip," they contend that the articles under consideration have as their component of chief value chip, and are commercially known as being made of chip. This definition or description of chip is not supported by standard lexicographers, the word being defined as "wood, coarse straw, palm leaves, or similar material split into thin chips and made by weaving into hats and bonnets." (Century Dictionary.)

The testimony relied on here to support the importers' claim of commercial usage affects me as the testimony in the later case of Zinn (first above referred to) affected the appraisers. It fails "to establish any uniform, definite, or general understanding thereof." It also fails to convince me that as to many of the exhibits submitted chip is the component article of principal value, even admitting the importers' definition of chip. Failing, therefore, to find the necessary preponderance of proof, the decision of the collector and of the Board of General Appraisers must stand; and I therefore affirm it.

(T. D. 27973).

Cuban treaty.

UNITED STATES *v.* DALTON.

U. S. Circuit Court, Eastern District of Pennsylvania. February 23, 1907. No. 12 (suit 1720).

CUBAN TREATY—DATE OF EFFECT—POSTPONEMENT BY PRESIDENT.

The postponement for ten days of the time when the Cuban reciprocal treaty (33 Stat., 2136; T. D. 24836) of December 17, 1903, should take effect, as proclaimed by the President, was valid, and merchandise imported after said date and before December 27, 1903, was not subject to the provisions of the treaty.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as G. A. 5989 (T. D. 26214), sustained the protest of M. J. Dalton Company against the assessment of duty by the collector of customs at the port of Philadelphia.

William M. Stewart, jr., assistant United States attorney, for the United States.

Hatch & Clute (*J. Stuart Tompkins*), for the importers.

HOLLAND, *District Judge:* The importation of the merchandise involved in this case arrived at Philadelphia on December 18, 1903, one day after the President issued his proclamation putting into effect the treaty between the United States and Cuba (33 Stat., 2136; T. D. 24836). The importers claimed a reduction in duties of 20 per cent; and the Board of General Appraisers, in their decision rendered March 25, 1905, held that the Dalton Company was entitled to this reduction on the ground that the President did not have the power to postpone the operation of the treaty until December 27, 1903. From this ruling the collector appealed to this court. The Supreme Court has held, in the case of United States *v.* American Sugar Refining Company (202 U. S., 563; T. D. 27410) and in United States *v.* Franklin Sugar Refining Company (202 U. S., 580; T. D. 27412) that the treaty went into effect December 27, 1903. The appeal in this case must therefore be sustained, and it is so ordered.

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(T. D. 27974.)

Cuban treaty.

DALTON *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania. February 23, 1907. No. 16 (suit 1721).

CUBAN TREATY—DATE OF EFFECT—RETROACTIVE OPERATION.

The Cuban reciprocal treaty of December 17, 1903 (33 Stat., 2136; T. D. 24836), had no retroactive effect, and merchandise was not subject to its provisions when entered before that date.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as G. A. 5989 (T. D. 26214), affirmed the assessment of duty by the collector of customs at the port of Philadelphia on merchandise imported by M. J. Dalton Company.

Hatch & Clute (*J. Stuart Tompkins*), for the importers.

William M. Stuart, jr., assistant United States attorney, for the United States.

HOLLAND, *District Judge:* The importation involved in the above-entitled suit was entered at the port of Philadelphia between April 10 and December 17, 1903. The appellants claimed a reduction in duties of 20 per cent because of the fact that the merchandise had been imported from Cuba; but the Board of General Appraisers held that they were not entitled to this reduction, on the ground that the Cuban treaty did not take effect until December 17, 1903, when it was proclaimed by the President of the United States, thus overruling the importers' claim that the said treaty went into effect April 10, 1903, the tenth day after ratifications were exchanged. The Supreme Court has, however, recently decided that the treaty went into effect December 27, 1903. United States *v.* American Sugar Refining Company (202 U. S., 563; T. D. 27410) and United States *v.* Franklin Sugar Refining Company (202 U. S., 580; T. D. 27412). The above-named appellants are therefore not entitled to the reduction claimed, and the appeal is therefore dismissed.

(T. D. 27975.)

Figured cotton cloth.

GITTERMAN *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 26, 1907. Suit 4033.

FIGURED COTTON CLOTH—DOTTED FABRICS—EXTRAORDINARY THREADS.

Paragraph 313, tariff act of 1897, imposing an additional duty on "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," *Held* to include goods showing on the face of the fabric dots produced by warp threads which on the reverse side hang loose and which may be removed without leaving a visible vacancy or weakening the cloth.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 6610 (T. D. 26377), affirmed the decision of the collector of customs at the port of New York on an importation by H. Gitterman & Co. The opinion of the Board reads as follows:

DE VRIES, *General Appraiser:* This protest is lodged against the assessment of 2 cents per square yard on cotton cloth under the provisions of paragraph 313 of the tariff act of 1897. It is claimed by the importers that the merchandise has no extra threads.

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We find from the record and samples before us that the merchandise consists of cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure. We hold it was properly assessed. The protest is overruled and the decision of the collector affirmed.

Said paragraph 313 reads as follows:

"313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* Certain cotton cloth having been assessed for duty under paragraph 313 of the tariff act of 1897, an appeal has been taken from the decision of the General Appraisers affirming such assessment. The material is cotton cloth of a fancy weave, showing colored dots at regular intervals. The dots are produced by warp threads showing on the face of the cloth to produce the dots, and on the reverse side looking like long stitches or "basting threads."

Paragraph 313 has been held "to describe and include cotton cloth in which there is a separate and an extra tread—that is, a thread not introduced for the purpose of the ordinary manufacture of plain cloth, but introduced in or during the process of weaving for the sole purpose of forming figures, and which does not in any way enter into the structural part of the goods, but is for ornamental purposes, and without which the fabric would have been a completed fabric." Mills *v.* United States (114 Fed. Rep., 257).

If the colored threads appearing in the goods under discussion be removed, the fabric is obviously complete; the only thing missing or wanting is the variegated effect produced by these threads, which add no strength to the fabric and may be removed without leaving a vacancy perceptible on ocular investigation. In my opinion, this cloth is entirely within the ruling in the case last cited.

The importers place reliance upon G. A. 4639 (T. D. 21940), and have produced in court the exhibit held in that decision not to be within paragraph 313. I am unable to see that the goods under consideration in the two cases are alike; the difference is one of degree, to be sure, but in the exhibit produced the colored threads are an integral portion of the cloth; although colored, they are truly "ordinary warp" threads and contribute to the strength of the cloth. Such is not the case here. If I am wrong in believing the exhibit in T. D. 21940 as containing only *ordinary* colored warp threads, then I think that that decision was wrong.

The decision of the General Appraisers is affirmed.

(T. D. 27976.)

Boiler flues.

THOMAS *v.* VANDEGRIFT.

U. S. Circuit Court, Eastern District of Pennsylvania. February 23, 1907. No. 48 (suit 1553).

STEEL BOILER FLUES—TUBES—FURNACE.

So-called arched Purves furnaces *Held* not to be commercially known as furnaces, and not to be dutiable as "welded cylindrical furnaces, made from plate metal," under paragraph 152, tariff act of 1897, but as "lap welded * * * steel boiler tubes (or) flues," under the same paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

These proceedings are brought in the name of C. Wesley Thomas, collector of customs at the port of Philadelphia, for review of a decision rendered April 29, 1903, in

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which the Board of General Appraisers sustained protests of F. B. Vandegrift & Co. against the assessment of duty by the collector at said port on articles invoiced as "arched Purves furnaces." The opinion filed by the Board reads as follows:

FISCHER, *General Appraiser:* The merchandise in question consists of so-called steel tubes or boiler flues. Duty was assessed thereon at the rate of 2½ cents per pound under the clause of paragraph 152 of the act of July 24, 1897, which provides for "welded cylindrical furnaces, made from plate metal." The importers claim that the merchandise is properly dutiable at the rate of 2 cents per pound under the first clause of said paragraph, which provides for "lap welded, butt welded, seamed, or jointed iron or steel boiler tubes, pipes, flues, or stays."

The question raised here was passed upon by this Board, *In re* Saunders & Masters, protest 93418*f* (unpublished, opinion filed November 3, 1902), adversely to the Government. These articles are not furnaces, but are tubes used for making furnaces. Following that ruling, we sustain the protests and reverse the decisions of the collector.

Said former decision of November 3, 1902, reads as follows:

FISCHER, *General Appraiser:* The merchandise was returned by the local appraiser as "welded, corrugated steel cylindrical furnaces made from plate metal," and duty was assessed thereon at the rate of 2½ cents per pound under paragraph 152, act of July 24, 1897. The importers claim that the articles are dutiable at 2 cents per pound under said paragraph as lap-welded steel boiler tubes or flues. We find from the testimony that the goods are not furnaces but are lap-welded steel tubes designed to be transformed into a furnace. We accordingly sustain the protest and reverse the decision of the collector.

Jasper Yeates Brinton, assistant United States attorney (*J. Whitaker Thompson*, United States attorney on the brief), for the United States.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers

HOLLAND, *District Judge:* In 1892 this same article of importation was before the district court in Delaware County, in the State of Delaware, in this circuit, and it was then held—

So far as inventors, manufacturers, and importers can fix the designation of an article under the revenue laws, it has been done in the present case through letters patent, invoices, and advertisements. An English patent, No. 3722, dated March 23, 1885, was issued to David Purves for "a new and useful improvement in boiler flues," and he subsequently obtained letters patent for the same invention from the United States, No. 372487, dated November 1, 1887. This flue has acquired a high reputation among scientific writers and practical steam engineers, and is known as "Purves' ribbed flue," as "Purves' ribbed furnaces," and as "Purves' ribbed boiler flue." *In re* Whitney (53 Fed. Rep., 235, 237).

In that case the classification assigned to the imported article was under the unenumerated iron and steel clause of the act of 1890, and duties assessed under the provisions of paragraph 215, Schedule C, of that act. The importer protested against this classification, insisting that the article was not a furnace but was a "Purves' ribbed boiler flue," and the district court sustained the decision of the Board in this view. Since that time there has been other legislation, and it is true that under the act of 1897 (par. 152, sec. 2) "welded cylindrical furnaces made from plate metal" are dutiable at 2½ cents per pound. But at the time this legislation was enacted this article of importation was not, by a definite, uniform, and general usage, commercially designated as a furnace (Federal Statutes Annotated, vol. 1, C). When first made they were known as "flues," and then as "flues or furnaces," and are becoming more and more referred to as "furnaces," but they are still known in the trade, to some extent, as "flues."

In view of the fact that the court has passed upon this question and the article is known by both terms in the trade, and the further fact that the Board of General Appraisers has uniformly required the articles imported to be classified as flues when the matter was before them, we are not convinced that the Government in this case has established that the commercial name of this article is a furnace.

The decision of the Board of General Appraisers is affirmed.

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(T. D. 27977.)

Balata.

EARLE *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 27, 1907. Suit 4313.

CRUDE BALATA—INDIA RUBBER.

Balata is one of the kinds of gums described commercially and generically as india rubber, and when crude is free of duty as "india rubber, crude," under paragraph 579, tariff act of 1897.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 12042 (T. D. 27458), affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by Earle Brothers.

Henry W. Rudd, for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The subject of this appeal is the gum or juice of the balata or "bully" tree. Its nature and dictionary definitions have been fully set forth in G. A. 5098 (T. D. 23599) and G. A. 6164 (T. D. 26751). The collector assessed duty upon this substance as a nonenumerated unmanufactured article under section 6 of the tariff act of 1897, and his assessment has been affirmed. The importers claim that it is entitled to free entry as "india rubber, crude," under paragraph 579.

It is abundantly shown by the Treasury decisions cited, and, indeed, is not denied, that botanically the balata or "bully" tree is different in species, if not in genus, from that to the gum of which the word "india rubber" was first applied upward of one hundred and thirty years ago. But under the rule that in laws relating to the revenues words are to be taken in their commonly received and popular sense, or according to their commercial designation, if that differs from the ordinary understanding of the word, United States *v.* Buffalo Gas Fuel Company (172 U. S., 341), the importers contend that the trade and commerce of the United States did not know, nor was there, indeed, anywhere known at the time of the passage of the present tariff act, any *one* kind or variety of vegetable gum or juice identified or described or actually designated by the words "india rubber crude." It is further asserted that "india rubber" was in 1897, and still is, a word used to designate nearly a hundred varieties of "inspissated vegetable gums" capable of use and actually used in the manufacture of what are commonly known, and in 1897 were commonly known, as "rubber goods." This particular gum is, and long has been, used for making dress shields and machinery belting, both of which articles are commonly described as "rubber shields" and "rubber beltings."

In my opinion, these contentions of the importers have been abundantly sustained by the testimony introduced in this court. I think it must be assumed that the framers of the tariff act knew that there was a great variety of gums generically and commercially described as "india rubber;" and within that category balata is fairly included.

The decision of the Board of Appraisers is reversed.

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(T. D. 27978.)

Combed silk.

FAWCETT *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. February 26, 1907. No. 142 (suit 3979).

1. COMBED SILK—SILK WASTE.

Combed silk which in the process of further manufacture fell from or was caught in the machines, so that the process was not completed, *Held* dutiable under the provision in paragraph 384, tariff act of 1897, for "silk partially manufactured * * * and not further advanced or manufactured than * * * combed silk," and not to be free of duty under paragraph 661 as "silk waste."

WALLACE, *Circuit Judge*, dissenting.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

The decision below (146 Fed. Rep., 83; T. D. 27189) affirmed a decision of the Board of United States General Appraisers, Abstract 5777 (T. D. 26248), which had affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by Hughes Fawcett.

Said merchandise consisted of combed silk, which, while undergoing further manipulation, either fell from the machine or adhered to parts of the machinery. The Board and the circuit court held that it had been properly classified under the provision in paragraph 384, tariff act of 1897, for "silk partially manufactured * * * and not further advanced or manufactured than * * * combed silk," and overruled the importer's contention that it was free of duty as "silk waste," under paragraph 661. It was observed by Judge Wheeler in the circuit court: "This material was none the less combed silk because it got out of place or dirty in the further process, so as not to be further advanced than combed silk."

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importer.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: Judgment affirmed.

WALLACE, *Circuit Judge*, dissented.

(T. D. 27979.)

Panne velvet.

UNITED STATES *v.* SILBERSTEIN.

U. S. Circuit Court, Southern District of New York. February 27, 1907. Suit 4092.

1. PANNE VELVET—PLUSH.

Panne velvet is dutiable as "plush" under paragraph 386, tariff act of 1897, rather than as "velvets," under the same paragraph.

2. PLUSH—VELVET—DIVIDING LINE.

No rule exists in trade or commercial usage whereby the classification of pile fabrics as plushes or velvets is determined by whether the length of the pile thereof is greater or less than 3.5 millimeters, respectively.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

These proceedings relate to the assessment of duty by the collector of customs at the port of New York on importations by Silberstein, Castell & Co. The decision of

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the Board reversing the assessment is reported as *In re* Kridel *et al.*, G. A. 6136 (T. D. 26668). The question was whether the merchandise, which consisted of panne velvet, was properly classified as "velvets" under paragraph 386, tariff act of 1897, or was dutiable under the provision in the same paragraph for "plush," as claimed by the importers. Note T. D. 26710, directing the application for review.

Subsequent to the rendition of the Board's decision above cited, another hearing on the subject was held, at which much additional evidence was introduced. But the majority of the Board held in *In re* Stirn, G. A. 6275 (T. D. 27057), that the new evidence would not warrant a departure from the rule of the previous decision. The evidence in this latter case has, by stipulation in the circuit court, been consolidated with the record in the former case, so that in the present proceedings the court has had before it all the evidence which was before the Board in both the Kridel and the Stirn cases.

A full statement of each side of the controversy appears from the following extracts from the majority and dissenting opinions filed in the latter case:

DE VRIES, *General Appraiser:* * * * Much testimony has been taken in addition to that taken at the time of the rendition of the decision in G. A. 6136 and accompanies this record. Numerous witnesses having a general and uniform knowledge of trade designation appeared and testified in these cases, and the great preponderance of the testimony was that the merchandise known as panne velvets, while it was bought and sold by that peculiar designation, is generally and uniformly classed by the wholesale trade as plushes. We therefore find that the merchandise * * * is generally and uniformly classed in the trade and commerce of this country as plushes. * * *

An effort has been made to show that the determination of what is a plush and what is a velvet is dependent upon the particular length of the pile, whether it is greater or less than 3.5 millimeters in length. The witnesses by whom it was sought to establish this rule admitted that while that was the rule followed in some places, it was not strictly adhered to. We are not satisfied from the evidence in these cases that there is a general uniform trade understanding in the wholesale or retail trade of this country that a pile fabric the pile of which is longer than 3.5 millimeters is a plush, and that a pile fabric the pile of which is shorter than 3.5 millimeters is known as a velvet. However commendable such a rule may be, and however desirable it may be to establish, in the determination of differences between provisions of a tariff law, a certain definite and uniform understanding in the trade, we are unable to say from a fair reading of all the testimony in these cases that such a rule obtains generally and uniformally throughout the wholesale trade in velvets and plushes in this country.

It appears that the rule was one adopted in France, and to some considerable extent has been followed among manufacturers in this country, but is not one which has obtained in the wholesale trade generally and uniformly throughout this country. Indeed, its general and uniform acceptance in France may be questioned seriously when we examine the invoices before us in these cases and observe thereupon, as is true, that the so-called "panne velvets" are, in the majority of cases, invoiced as "peluche," with some qualifying designation, which, in English, means plush; whereas, if the rule contended for were true, they could not be properly designated such even in France.

HOWELL, *General Appraiser* (dissenting): * * * In the present case the record is materially different from the record in Kridel's case. The importers have produced no testimony in this case further than such as was necessary to prove samples of the merchandise, but have rested solely on the record in the former case, which, at their request, has been incorporated in and made a part of this record. The Government, on the other hand, has introduced the testimony of four witnesses—importers, manufacturers, and dealers in velvets and plushes in the markets of this country—and they all testified that since the introduction of panne velvets they have been, and are still, known definitely, generally, and uniformly in the wholesale trade of this country as "panne velvets," and that, having in mind the line drawn in the trade in this country prior to 1897 between velvets and plushes, they were within the class always dealt in as *velvets*. * * * Other witnesses might be quoted to show that the goods are known in the wholesale trade of this country as panne velvets, but I think it is unnecessary to set out their testimony here, for it is stated in the prevailing opinion that—

"The great preponderance of testimony was that the merchandise known as panne velvets, while it was *bought and sold by that peculiar designation*, is generally and uniformly *classed* by the wholesale trade as plushes."

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As it is agreed, then, that the testimony shows that the articles are bought and sold in this country as "panne velvets," that, in my judgment, establishes their commercial designation as belonging to the general class of velvets; and, since there is a tariff provision which embraces these articles by their commercial designation, this fixes their status for dutiable purposes, and it is quite immaterial how the goods may be classed when judged by some other standard. The fact that the articles are known as "panne velvets," rather than by the single word "velvets," is also quite immaterial, for the addition of the adjective can not take the articles out of the general class to which they would otherwise belong. Heller *v.* United States (124 Fed. Rep., 299).

Of course if velvets were not provided for in the tariff and plushes were, and the articles were shown to belong to the class of plushes, then they would unquestionably be dutiable as plushes; but, since there is an *eo nomine* provision for velvets, and these articles are commercially known as velvets, I fail to see how they can be properly classified as plushes.

It is stated in the opinion in G. A. 6136 that—

"The term 'panne,' is a French term, and means 'ironed,' or 'smoothed.' The term 'panne velvet' means 'ironed or pressed velvet,' and would seem to indicate a kind of plush, which, by reason of its close resemblance to velvet, is at times difficult to distinguish from it."

It is quite true that the term "panne velvet" means "ironed velvet," but an ironed velvet is never a plush. The two fabrics are entirely distinct, the plush having a longer pile which gives it an appearance decidedly different from a velvet.

It is clearly shown by the testimony in this case that the chief distinction between plushes and velvets is the length of the pile of the fabric, and that the dividing line is about 3.5 millimeters, those fabrics having a pile above that length being plushes and those having a shorter pile being velvets. The length of the pile of panne velvets is under 3.5 millimeters, and, therefore, judged by this standard, they are velvets. In my opinion, the testimony is amply sufficient to justify the Board in adopting this standard, which has been the standard followed in France for some years, and is well recognized by manufacturers in this country as the line of demarkation between velvets and plushes. It is not necessary to show that in buying and selling these goods in the wholesale trade in this country the particular measurement of the pile of the fabric is mentioned, but it is sufficient to show, as the testimony in this case does, that the commercial designation of the article is always the same, according as the pile of the fabric may be longer or shorter.

This Board and the courts have frequently established lines of demarkation as convenient criteria to be followed by customs officials in determining the proper classification of goods of the same general character, but which, because of certain distinguishing features, have different trade designations, and are, therefore, subject to different rates of duty. In some instances the width of the goods has been the test applied, as in the cases involving the question of the proper classification of chiffon bands and veilings. Robinson *v.* United States (121 Fed. Rep., 204); United States *v.* Lahey (83 Fed. Rep., 691); *In re* Forchheimer, G. A. 6034 (T. D. 26353). In other instances the price of the articles has been accepted as the criterion for determining their classification, as in the case of toy music boxes. Jacot *v.* United States (65 Fed. Rep., 415), and harmonicas, G. A. 4679 (T. D. 22096). Note, also, G. A. 5697 (T. D. 25355); G. A. 5851 (T. D. 25770); G. A. 5948 (T. D. 26095).

My conclusion is that panne velvets are properly dutiable as velvets. If, however, the testimony is considered insufficient to establish the commercial designation of the articles as velvets, it is equally insufficient, in my judgment, to establish their commercial designation as plushes, and, as the articles are admittedly pile fabrics composed in part of silk, they are dutiable as assessed, inasmuch as such goods are made dutiable under paragraph 386 at the same rate as velvets.

D. Frank Lloyd, assistant United States attorney, for the United States.

Brooks & Brooks (*Frederick W. Brooks* of counsel), for the importers.

HOUGH, *District Judge:* A perusal of the testimony herein convinces me—

1. That it is highly desirable that an accurate line of demarkation be drawn between plush and velvet.

2. That the establishment of a rule declaring that all fabrics of the type under consideration having a pile of over 3.5 millimeters in length shall be regarded as plushes would furnish such accurate line of demarkation.

3. But no such rule exists in trade or commercial usage.

It results, therefore, that every case must be covered by opinion evidence, unsatisfactory as it is. The evidence here supports the conclusion of the General Appraisers, and their decision is therefore affirmed.

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(T. D. 27980.)

Braid ornaments.

HESSE *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 28, 1907. Suit 4210.

1. BRAID ORNAMENTS—IMITATION LACE.

So-called braid ornaments, consisting of collars and cuffs composed of braids sewn together by hand and ornamented with threads and other material, *Held* not to be covered by paragraph 339, tariff act of 1897, relating to articles of lace or in imitation of lace.

2. LACE—IMITATION LACE—DISTINCTION.

The distinction between real and imitation lace seems to be that the former is made by hand and the latter upon machines.

3. COMMERCIAL DESIGNATION—EVIDENCE BY RETAILERS.

In the tariff classification of merchandise the names given by retailers in puffing their wares and by the women who buy them are not controlling.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6283 (T. D. 27086), which, on the authority of United States *v.* Van Blankensteyn (91 Fed. Rep., 971) affirmed the assessment of duty by the collector of customs at the port of New York on goods imported by D. S. Hesse & Bro.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The subjects of this appeal are collars and cuffs designed for feminine wearing apparel, composed of braids sewn together by hand and ornamented with threads and other material. They have been assessed as "cotton lace articles," under paragraph 339 of the tariff act of 1897. They were invoiced as "cotton braid ornaments," and the importers assert should have been classified as "manufactures of cotton" under paragraph 322.

The testimony which has prevailed before the Board of Appraisers is that these goods are known as Renaissance collars and that they have a "lacy" effect. It is not pretended that they are of lace, nor that they are imitation lace, the distinction between which terms seems to be that real lace must be made by hand and imitation lace upon machines. I conclude from the evidence introduced in this court that they are not "Renaissance" collars, and that they are usually dealt in by retail in this country as "lace collars and cuffs," but they are not so known among importers and foreign makers.

If any importance is to be given to the testimony that the wearing apparel under consideration has a "lacy" effect, it must be based upon the words "in imitation of lace" found in paragraph 339. But, as was remarked in G. A. 6452 (T. D. 27644), "there is no article known in any trade as an imitation *of* lace. This is descriptive purely of a condition of an article." It seems to me that the effect upon the uneducated eye of something which is neither real nor imitation lace is far too unsubstantial to base a customs ruling upon. I think the question in Kleeberg *v.* United States (72 Fed. Rep., 252, 254), "How can a lace article be made without lace?" is unanswerable.

These articles are not lace of any kind. To the eye of a person having any acquaintance with lace as defined by the dictionaries and recognized in Sidenberg *v.* Robertson (41 Fed. Rep., 763), these collars and cuffs do not in any way resemble

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lace. The name given to them by retailers puffing their wares, and by the women who buy and use them, is not controlling; and therefore, because (1) the evidence clearly shows that the articles are not lace of any kind, and (2) the preponderance of testimony is that they are known as "braid collars" among importers, I think the decision of the General Appraisers must be reversed and the protest sustained.

(T. D. 27981.)

Production of samples.

UNITED STATES *v.* HERRMANN. UNITED STATES *v.* SAKS. UNITED STATES *v.* RHEIMS.

U. S. Circuit Court of Appeals, Second Circuit. January 17, 1907. Nos. 133–5 (suits 3752, 3970, and 3753).

EVIDENCE—SUFFICIENCY—PRODUCTION OF SAMPLES.

The character of imported merchandise may be shown by witnesses familiar with the goods, testifying from the invoice descriptions and without the production of actual samples of the importations.

APPEALS from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

The decisions below, which are reported in 143 Federal Reporter, 843 (T. D. 27136), reversed decisions of the Board of United States General Appraisers, Abstracts 3720 and 3735–6 (T. D. 25780) and Abstract 5266 (T. D. 26154), which had affirmed the assessment of duty by the collector of customs at the port of New York on importations by H. Herrmann, Saks & Co. and Leon Rheims Company.

The merchandise in controversy was held by the court below to be similar to that passed upon previously by the same court in Herrmann *v.* United States (141 Fed. Rep., 486; T. D. 26598), consisting of so-called beaver strips or bands, which are in the form of rectangular pieces of felted material, are used in making hats, and were there decided to be dutiable as hat forms in chief value of fur under paragraph 432, tariff act of 1897. In these appeals the Government has not questioned the correctness of this classification, but contends that the evidence was insufficient on which the circuit court based its conclusion of similarity of the merchandise to that in Herrmann *v.* United States (*supra*), and the assignments of error are limited to this phase of the cases.

The evidence the sufficiency of which is at issue consisted of testimony of the importers or their employees, who were familiar both with the importations in controversy and with their invoice descriptions, and who on examination of the exhibits in said Herrmann case stated that the goods were similar to said exhibits. Actual samples were not produced, and this evidence was based on the recollection of the witnesses as to the character of the goods represented by the invoice description of the various items which had been imported two years or more previously. The Government urged that in view of the failure of the importers to produce samples of the goods and the fact that the testimony of the importers was based on an inspection of the invoices there was no competent evidence to sustain the conclusion of the circuit court.

J. Osgood Nichols, assistant United States attorney, for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

Before WALLACE, LACOMBE, and COXE, *Circuit Judges*.

PER CURIAM: Decrees affirmed in open court.

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(T. D. 27982.)

Statuary.

TIFFANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 13, 1907. Suit 4036.

STATUARY OF IVORY AND BRONZE.

A statue of ivory and bronze, ivory the component of chief value but bronze predominating in quantity, *Held* to be statuary as defined in paragraph 454, tariff act of 1897, providing that "the term 'statuary' as used in this Act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 6643 (T. D. 26390), affirmed the assessment of duty by the collector of customs at the port of New York on an importation by Tiffany & Co. The opinion filed by the Board reads as follows:

WAITE, *General Appraiser:* This is an importation of a piece of statuary entitled "Bellona," composed of bronze and ivory, one of the last works of the noted French sculptor Gerome. It was assessed for duty at 35 per cent ad valorem, under paragraph 450 of the tariff act of 1897, as a manufacture in chief value of ivory, and is claimed to be dutiable at 15 per cent ad valorem under the reciprocity agreement with France (30 Stat., 1774; T. D. 19405), made by authority of section 3 of said tariff act. Section 3 permits a reduction in the rate of duty on "statuary" to 15 per cent ad valorem in such agreement, but must be read in connection with the qualifying language of paragraph 454, which is as follows:

"454. Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, not specially provided for in this Act, twenty per centum ad valorem; but the term 'statuary' as used in this Act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone or alabaster, or from metal, and as is the professional production of a statuary or sculptor only."

There is no question but that the "Bellona" is a work of art and a piece of statuary of high excellence. The principal component material in point of quantity is metal, the entire body of the figure, including the drapery, the helmet, shield, and sword, being of cast bronze or other metal. The face, arms, and lower extremities, where the representation of exposed flesh appears, are of ivory, which is stated to be the component material of chief value. In determining whether a statue was composed wholly or substantially of a material named in paragraph 454 the Board would be disposed to regard the relative quantity of the component materials rather than their relative value. Otherwise a statue composed substantially of marble, for example, but having some incidental feature or decoration in another material, such as a precious metal or precious stone, of greater intrinsic value than the marble itself, might be excluded from the benefits of the law. But whether the present statue may be called a statue of ivory or a statue of metal is unimportant, so far as the application of paragraph 454 is concerned, since that provision does not cover statuary of ivory, and statuary of cast bronze has been held to be excluded therefrom as not being statuary "wrought by hand" from metal. Tiffany *v.* United States (71 Fed. Rep., 691); *In re* Perkins, G. A. 5213 (T. D. 24016).

The manner of producing the metal part of the statue in controversy is what is known as the *cire perdue* process described in the Perkins case (*supra*). The only possible difference between the method of production in that case and the one employed in this is that there may have been a little more of the handiwork of the artist in finishing or chasing the metal of the "Bellona." However this may be, we do not think, under the construction heretofore given by the Board and the courts to paragraph 454, that the work in question can be held to be a piece of statuary "wrought by hand" from metal, within the meaning of the statute. It may be thought to be

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illogical to hold that it is not entitled to the consideration assumed to be given to works of art of this character by the statute, but if fault there be it is in the law and can only be remedied by legislation.

We therefore hold that the statue in question is not "statuary" within the meaning of paragraph 454 and section 8 of the act, and overrule the protest, affirming the collector's decision.

D. Macon Webster, for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* Decision of Board of General Appraisers reversed and protest sustained.

(T. D. 27983.)

Books with lithographic covers.

DUTTON *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 15, 1907. Suit 4858.

BOOKS WITH LITHOGRAPHIC COVERS—"CONTAINING."

The provision in paragraph 400, tariff act of 1897, for "books for children's use, *containing* illuminated lithographic prints," does not include a book having as its only lithographic print a picture on the front cover.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 12000 (T. D. 27458), affirmed the assessment of duty by the collector of customs at the port of New York on importations by E. P. Dutton & Co. These importations consisted of books having as their only lithographic prints a picture on the front cover of each. The importers contended that they had been improperly subjected to the rate provided in paragraph 400, tariff act of 1897, for "books for children's use, containing illuminated lithographic prints," and that they should have been classified as "books" under paragraph 403. This contention was overruled by the Board on the authority of *In re* Dutton, G. A. 5858 (T. D. 25803). The reasoning on which the Board's conclusion was based appears from the following extract from the decision last cited:

FISCHER, *General Appraiser:* The contention of the importers is that because the only lithographic print in the books is that constituting the front cover—which we find to be a fact—the articles are not books "containing" illuminated lithographic prints as provided in the statute. We are of opinion, however, that this point is not well taken, and that the manifest intention of the statute was to levy a specific duty on books of this character whether the pictures were on the inside or outside of the book. One of the synonyms of the word "contain" given in the Standard Dictionary is "include," and it is clear that a book fairly includes what is on its covers as well as what is between them.

In G. A. 5049 (T. D. 23424) certain German books were held not to be free of duty as "books printed exclusively in languages other than English," because there was an advertisement in the English language printed on the back cover. In that decision it was said:

"The fact that this * * * matter is printed on the cover and not in the body of the book will not change the character of the publication. The cover is not merely incidental thereto, but is part of an entirety."

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HOUGH, *District Judge:* Decision reversed.

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(T. D. 27984.)

Tiles.

SCHROEDER *v.* UNITED STATES. ENGELHARD *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 27, 1907. Suits 4242–3.

FLINT TILES—TILES OF TWO COLORS.

Certain extremely hard tiles made from clays of two different colors, are not "tiles, plain unglazed, one color," under paragraph 88, tariff act of 1897, but are dutiable under the provision in the same paragraph for flint and semivitrified tiles.

ON application for review of decisions of Boards of United States General Appraisers.

[Decision in favor of the Government.]

The decisions below, which are reported as Abstract 10923 (T. D. 27296) and Abstract 11032 (T. D. 27318), affirmed the assessment of duty by the collector of customs at the port of New York on importations by Rudolph Schroeder and Charles Engelhard. The opinions filed by the two Boards rendering the decisions in question read as follows:

MCCLELLAND, *General Appraiser:* The merchandise involved is shown by the samples in evidence to be tiles of varied dimensions, varying from 1 inch in width and 6 inches in length to about 6 inches square and one-half inch in thickness. The appraiser returned the merchandise as "flint tiles, semi-vitrified," and duty was assessed thereon at the rate of 8 cents per square foot under the provisions of paragraph 88, tariff act of 1897. It is claimed duty should have been assessed at the rate of 4 cents per square foot under the provisions in said paragraph for "tiles, plain unglazed, one color, exceeding two square inches." Said paragraph 88, under which duty was so assessed, reads as follows:

"Tiles, plain unglazed, one color, exceeding two square inches in size, four cents per square foot; glazed, encaustic, ceramic mosaic, vitrified, semi-vitrified, flint, spar, embossed, enameled, ornamental, hand-painted, gold-decorated, and all other earthenware tiles, valued at not exceeding forty cents per square foot, eight cents per square foot; exceeding forty cents per square foot, ten cents per square foot and twenty-five per centum ad valorem."

The appraiser in his special report describing said tiles says:

"The merchandise in question consists of two different colored clays; a buff-colored body and a surface of brown, red, gray, or other color superadded before firing. They are extremely hard, unimpressible, and unyielding. * * * They are composed of substances that will endure a great heat, that the several materials may be partially fused and be imperfectly vitrified."

The question at issue is the same as that which was involved and passed upon by the Board in G. A. 4281 (T. D. 20127). There is nothing in the evidence before us to justify a departure from the said ruling of the Board, and we therefore overrule the protests. The decision of the collector is affirmed in each case.

HAY, *General Appraiser:* This protest claims that certain tiles, assessed for duty at 8 cents per square foot under the provisions of paragraph 88, tariff act of 1897, are dutiable at 4 cents per square foot under the same paragraph.

The appraiser reports that the merchandise consists of two different colored clays, extremely hard, known as flint tiles or French flint tiles, and that they do not come within the provision for plain, unglazed, one-color tiles.

Although duly notified of the time and place of hearing, the importer failed to appear. The protest is overruled.

Hatch & Clute (*Walter F. Welch* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* No importance can be attached to the use of the word "vitrous" by the witnesses. They evidently regard the word as synonymous with "vitrified." The very matter here litigated seems to have been considered in G. A.

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4281 (T. D. 20127) very shortly after the present tariff act went into effect. Tiles of the same kind as are now under consideration were also investigated in G. A. 3704 (T. D. 17656) shortly before the passage of the act of 1897. Comparing these two decisions with the testimony in this case, I am convinced that the articles in question were, prior to 1897, known as "flint tiles," and were inserted in the act of 1897 by their trade designation. I think, therefore, that the sort of tile shown by illustrative Exhibit A (November 8, 1906) was properly classified as a flint tile. I am in some doubt as to whether said Exhibit A is semivitrified, but the testimony on that head is not sufficiently strong to disturb the finding of the Appraisers.

The subject of protest in the second suit, as shown by Exhibit 1, 175685, February 16. 1906, seems to me to be clearly semivitrified.

The decisions of the Appraisers are sustained.

(T. D. 27985.)

Marrons.

SCHALL *v* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 4, 1907. No. 194 (suit 3906).

COMFITS—MARRONS—NUTS.

Marrons in sirup, consisting of boiled chestnuts preserved in sirup and flavored with vanilla, are dutiable as "comfits" under paragraph 263, tariff act of 1897, rather than as "nuts" under paragraph 272.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see 147 Federal Reporter, 760 (T. D. 27447), reversing a decision of the Board of United States General Appraisers, G. A. 5908 (T. D. 26007), which had sustained the protest of Schall & Co. against the assessment of duty by the collector of customs at the port of New York.

The article in controversy was described as follows by Judge Platt in the circuit court:

The merchandise in suit is prepared, before it is imported, in the following manner: A large chestnut, grown in southern France, Italy, and Spain, called a marron, is stripped of its covering and the inner meaty portion is boiled in plain water to make it soft and palatable; it is then immediately placed in a light sirup to preserve it, and a vanilla flavoring is added to increase its delicacy. Those broken in this operation are sent over in fragments, and those which retain their shape are sent whole. The whole marron brings a better price than the broken pieces.

The Board held this merchandise dutiable under the provision in paragraph 272, tariff act of 1897, for "nuts of all kinds, shelled or unshelled," as claimed by the importers. On the Government's appeal (T. D. 26057) this decision was reversed as above stated, the circuit court holding that duty was properly assessed under paragraph 263, relating to "comfits."

Hatch & Clute (*J. Stuart Tompkins* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: Decision affirmed.

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(T. D. 27986.)

Correction of reappraisement.

UNITED STATES *v.* LEEMING. LEEMING *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 21, 1907. Suits 4226 and 4228.

1. REAPPRAISEMENT—CORRECTION OF RETURN.

A Board of General Appraisers, after returning its findings in a reappraisement case made a supplemental return two months later, stating that the plain wooden coverings of the merchandise were not included in the value given in the previous return. *Held* that this amendment could not legally be made, and that the decision of the Board should be construed as including said coverings in the value stated in the original return, irrespective of the provision in paragraph 281, tariff act of 1897, governing the assessment of the merchandise in question (chocolate), that the "value of all coverings other than plain wooden shall be included" in the dutiable value.

2. ADDITIONAL DUTY—GOODS IN EXCESS.

The quantity of an importation which had been undervalued proved to be somewhat greater than the amount specified in the invoice. *Held* that, in assessing the additional duty for undervaluation, as provided in section 7, customs administrative act of 1890, it should not be limited to the quantity specified in the invoice, but should also be applied to the excess.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government; cross appeal by importers sustained.]

These are cross appeals from a decision reported as G. A. 6315 (T. D. 27216), in which the Board affirmed in part and reversed in part the assessment of duty by the collector of customs at the port of New York on importations by Thomas Leeming & Co. Note T. D. 27284, directing the application for review on the part of the Government.

J. Osgood Nichols, assistant United States attorney, for the United States.

Everit Brown, for the importers.

HOUGH, *District Judge:* Certain chocolate having been appraised by a single General Appraiser on appeal from the collector, his appraisement sheet contained as a part of his report of proceedings the following words:

These values as reappraised represent the foreign market value of the goods * * * *excluding the value or weight of all the plain wooden coverings.*

Thereupon an appeal was taken to the Board of General Appraisers, and three members of that Board, having examined into the matter, made return dated April 12, 1905, stating:

We have examined the * * * merchandise * * * and do certify that in our opinion the market value or wholesale price of the said goods * * * was and we do hereby appraise the same as follows: [Then stating the description of the merchandise and the price thereof.]

The Board of General Appraisers did not add to or incorporate in their return the words used by the single General Appraiser as above noted. In June, 1905, a deputy collector addressed a communication to the Board of Appraisers, stating that a difference of opinion had arisen in the collector's office as to whether the decision of the Board did or did not cover the "plain wooden coverings" specifically excepted in the report of the single Appraiser. The Board thereupon and on June 6, 1905, added to their reappraisement sheet a statement that "the value and weight of outer wooden coverings" were not included in the values stated in the return of April 12.

It is admitted that in making the addendum of June to the appraisement sheet of April 12 the Board of Appraisers exceeded their authority and that such interpretation of their decision is not to be considered in the assessment of duties thereunder, United States *v.* Morewood (94 Fed. Rep., 639); but it is contended by the Government that owing to the nature of the goods imported—*i. e.*, chocolate—which are dutiable under paragraph 281 of the tariff act of 1897, the same result is arrived at as

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would be reached were the addendum of June given full force and effect, because the paragraph relating to chocolate provides that "the weight and value of all coverings other than plain wooden shall be included in the dutiable weight and value."

To this contention I can not agree. It is not the business of the appraisers to assess the duty, but merely to ascertain values. The return of the Board of Appraisers dated April 12 purports to be made in strict compliance with section 19 of the act of June 10, 1890, as amended, and to state "the actual market value or wholesale price" [of the goods in question] which must by statute include "the value of all cartons * * * and coverings of any kind." The importers had therefore an absolute right to rely upon the statutory correctness of the return or reappraisement sheet of April 12, and to base their business transactions upon the faith thereof. They were entitled to believe that the values fixed by the Board of Appraisers did include the value of "coverings of *any* kind." They might rely upon the deductions appropriate under paragraph 281 being made by the collector.

This record makes it quite clear that the omission from the return of the Board of Appraisers of the statement (above quoted) embodied in the proceedings of the single Appraiser was a mistake; but that fact should not lead to the allowance of a custom calculated to impair security in business dealings with the Government and to lessen reliance upon the finality of a duly signed appraisement.

The appeal of the importers is sustained.

The appeal of the United States herein arises from the fact that in one of the importations covered by this proceeding it appeared that the value of the goods as declared in the entry was less than the appraised value thereof, and likewise that the quantity of the goods so increased in value by appraisement was greater than that specified in the invoice.

It follows that the importer is subject to the additional or increased duties provided for by section 7 of act of June 10, 1890, as amended by section 32 of the tariff act of 1897. The collector assessed such additional duties upon the excess in quantity over and above that stated in the invoice, a proceeding contrary to the ruling of the Board of General Appraisers, *In re* Herazy, G. A. 5804 (T. D. 25645), and his proceedings have accordingly been overruled by the Board of General Appraisers, from which an appeal has been taken. I am unable to assent to the correctness of the decision quoted. It rests upon the proposition that under section 7 (*supra*) additional duties can be collected only upon the appraised value in excess of "the value declared in the entry," and that, inasmuch as any excess of quantity discovered in the goods referred to in the *entry* was never entered, therefore under the language of the statute but a single duty is chargeable against the excess of weight.

It is obvious that such a construction of the statute opens the door to profitable fraud. A merchant who both undervalues his goods and understates the quantity thereof may easily so grossly understate the quantity that he is but little injured by paying additional duties only upon the quantum of his entry, and he can run this risk in the hope that both undervaluation and understatement of quantity will escape detection, to his great and obvious profit.

Nor does such construction of the statute appear to me necessary or proper. The act provides that "the additional duties" shall apply to the "articles in each invoice," and for each entry an invoice is necessary. The intent of each and every custom-house entry is to pass into the country goods of a certain quantity and a certain value, and both the quantity and value should be and usually are discoverable from the documents collectively known as the "entry." The act of entering goods of a stated quantity constitutes a promise on the part of an importer to pay lawful duty upon all those goods, be the quantity more or less; and it appears to me entirely plain that if undervaluation exists additional duties necessarily attach to all the goods on which a single duty would have been payable had no such undervaluation been discovered.

The appeal of the United States is sustained.

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(T. D. 27987.)

Drawback on box shooks and wooden boxes.

T. D. 25902, of December 24, 1904, relating to wastage on box shooks and wooden boxes, amended so as to provide an addition of one-sixteenth of an inch for each side dressed.

TREASURY DEPARTMENT, *March 9, 1907.*

SIR: Hereafter in estimating the allowance of drawback on box shooks, wooden boxes, and packing cases manufactured from imported lumber, the allowance shall be based upon imported lumber of a thickness not to exceed the actual thickness of that appearing in the exported article, with an addition of not more than one-sixteenth of 1 inch for each side dressed. The 9.6 per cent of the board measure of the lumber appearing in the boxes, based on the thickness of boards thus ascertained, shall be allowed to compensate for loss in sawing. T. D. 25902 of December 24, 1904, is amended accordingly.

Respectfully, JAMES B. REYNOLDS,
(30654.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27988.)

Bellingham, Wash., a port of delivery for merchandise forwarded under the immediate-transportation act of June 10, 1880.

TREASURY DEPARTMENT, *March 9, 1907.*

To officers of the customs and others concerned:

The appended act of Congress, extending to Bellingham, Wash., the privileges of the seventh section of the act approved June 10, 1880, is published for the information and guidance of all concerned.

GEORGE B. CORTELYOU, *Secretary.*

AN ACT Extending to the subport of Bellingham, in the State of Washington, the privileges of the seventh section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the seventh section of the Act approved June tenth, eighteen hundred and eighty, governing the immediate transportation of dutiable merchandise without appraisement, be, and the same are hereby, extended to the subport of Bellingham, in the State of Washington.

Approved, January 25, 1907.

(T. D. 27989.)

Additional list of customs notaries.

[Omitted from this edition.]

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(T. D. 27990.)

Drawback on cylindrical grinding machines.

Drawback on cylindrical grinding machines manufactured by the Landis Tool Company, of Waynesboro, Pa., with the use of imported pig iron.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: On the exportation of cylindrical grinding machines manufactured by the Landis Tool Company, of Waynesboro, Pa., in part with the use of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the gross and net weight of each package and of the entire shipment.

The drawback entry must show the total number and net weight of the merchandise exported and the weight of the imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 21, 1907, transmitted herewith for filing in your office.

In liquidation, the weight of the imported pig iron which may be taken as the basis for the allowance of drawback may equal the weight declared in the drawback entry of the pig iron consumed, after official verification of exported quantities, provided the same shall not exceed the net weight of the imported pig iron contained in the merchandise with an addition to compensate for absolute loss in the process of manufacture not to exceed 6 per cent of said net weight.

Respectfully, JAMES B. REYNOLDS,
(43655.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27991.)

Drawback on plows and plow castings.

Drawback on plows and plow castings manufactured by the Hampton Manufacturing Company, of Hampton, Va., with the use of imported pig iron.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: On the exportation of plows and plow castings manufactured by the Hampton Manufacturing Company, of Hampton, Va., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

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The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight of each package of plow castings separately and in the aggregate.

The drawback entry must show the total net weight of plow castings exported and the total quantity of imported pig iron consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of the materials and in the manner set forth in the manufacturers' sworn statement, dated February 20, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantities, provided the same shall not exceed the net weight of the imported pig iron contained in the exported castings, with an addition of 5 per cent of such weight to compensate for loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(44814.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27992.)

Drawback on turbine and other water wheels and power-transmitting machinery.

Drawback on turbine and other water wheels and power-transmitting machinery manufactured by the S. Morgan Smith Company, of York, Pa., with the use of imported pig iron.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: On the exportation of turbine and other kind of water wheels and power-transmitting machinery manufactured by the S. Morgan Smith Company, of York, Pa., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the gross and net weight of each package separately and in the aggregate, together with the net weight of castings made with the use of imported pig iron contained in each case.

The drawback entry must show the total net weight of the castings made with the use of imported pig iron, the percentage and weight of imported pig iron contained in each of said wheels and machinery exported, and, in addition to the usual averments, that the merchandise was manufactured of the materials and in the manner set forth in the manufacturers' sworn statement, dated February 22, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the

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quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the pig iron contained in the exported articles with an addition of 6 per cent of such weight to compensate for loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(22799.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27993.)

Drawback on weighing machines.

Drawback on weighing machines manufactured by E. & T. Fairbanks & Co., of St. Johnsbury, Vt., with the use of imported pig iron.—T. D. 24710 of October 9, 1903, amended.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: The Department's regulations of October 9, 1903 (T. D. 24710), establishing a rate for the allowance of drawback on the exportation of weighing machines manufactured in part from imported pig iron by E. & T. Fairbanks & Co., of St. Johnsbury, Vt., are hereby amended by canceling the last paragraph and substituting therefor the following:

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity used as declared in the drawback entry, but in no case shall it exceed 38.2 per cent of the weight of the imported pig iron contained in the exported castings, to which quantity may be added a sufficient quantity to compensate for loss in manufacture not to exceed 5.1 per cent of such weight.

Respectfully, JAMES B. REYNOLDS,
(4743 *l.*) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 27994.)

Drawback on cork-pressing machinery.

Drawback on cork-pressing machinery manufactured by Friedenwald Brothers, of Baltimore, Md., with the use of imported cutting and forming dies and punches and punch holders.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: On the exportation of cork-pressing machinery manufactured by Friedenwald Brothers, of Baltimore, Md., with the use of imported cutting and forming dies and punches and punch holders incorporated with and made a permanent part of such machinery, a drawback will be allowed equal in amount to the duty paid on the imported materials used, less the legal deduction of 1 per cent.

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The preliminary entry must show the marks and numbers of the shipping packages and the number of cork-pressing machines contained in each package and in the entire shipment.

The drawback entry must show the total number of cork-pressing machines exported, and the number of imported cutting and forming dies and punches and punch holders contained therein, describing the same as they are described in the import invoice or invoices, and, in addition to the usual averments, that the exported machines were manufactured of materials and in the manner set forth in the manufacturers' sworn statement, to be filed at your port.

In liquidation, the number of imported cutting and forming dies and punches and punch holders which may be taken as the bases for the allowance of drawback may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed fourteen of each of said imported parts for each machine.

Respectfully, JAMES B. REYNOLDS,
(43610.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 27995.)

Market value—Date of exportation.

Date of sailing of vessel is "time of exportation" within meaning of section 19 of act of June 10, 1890.

TREASURY DEPARTMENT, *March 11, 1907.*

SIR: The Department duly received your letter of the 28th ultimo, relative to the resolution adopted at the recent annual conference of United States local appraisers that the date of clearance of the importing vessel should be taken as the date of exportation for the purpose of fixing the foreign market value of imported merchandise, and that collectors of customs should stamp such date upon each invoice transmitted to the appraiser in order that the appraising officers might be advised of the same.

The Department is of the opinion that under the decisions of the United States Supreme Court in the cases of Sampson *et al. v.* Peaslee (20 How., 571) and Irvine *et al. v.* Redfield (23 How., 170) the date of the sailing of the vessel from the foreign port is the time of exportation within the meaning of section 19 of the customs administrative act of June 10, 1890.

It appears to the Department that the date of the vessel's clearance is necessary to the appraiser where the value of merchandise is subject to sudden fluctuation, or where there was a probable change of

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value about the date of exportation. When lists of such merchandise shall be furnished to you by the appraiser, you are hereby authorized to have the dates of the clearance of the vessels stamped on the invoices.

Section 25 of the act of August 28, 1894, regarding the value of foreign coins, makes the date of the consular certification of the invoice the date of exportation for the purposes of the section.

Respectfully, JAMES B. REYNOLDS,
(44040.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 27996.)

Drawback on moldings.

Drawback on moldings manufactured by A. Roberson & Son (Incorporated), of Binghamton, N. Y., wholly from imported lumber.

TREASURY DEPARTMENT, *March 12, 1907.*

SIR: On the exportation of moldings manufactured by A. Roberson & Son (Incorporated), of Binghamton, N. Y., wholly from imported lumber, a drawback will be allowed equal in amount to the duty paid on the imported lumber so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the number of lineal feet of each size of molding contained in each package and in the entire shipment.

The drawback entry must show the total number of lineal feet of each size of molding exported, together with the total quantity of imported lumber consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 7, 1907, transmitted herewith for filing in your office.

The manufacturer shall keep a manufacturing record showing the quantity of moldings of each size manufactured and the dimensions of the imported lumber used in the manufacture thereof, and a sworn abstract from this record shall be filed with each entry.

In liquidation, the quantity of imported lumber which may be taken as the basis for the allowance of drawback may equal the quantity shown in the drawback entry after official verification of exported quantities, provided in no case shall it exceed the length, width, and thickness of the imported lumber used, as shown in the abstract from the manufacturing record.

Respectfully, JAMES B. REYNOLDS,
(119.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 27997—G. A. 6558.)

Flax noils.

Flax noils held properly dutiable as waste not specially provided for under paragraph 463, tariff act of 1897.—Ritchie *v.* United States (141 Fed. Rep., 664; T. D. 26461) followed.

United States General Appraisers, New York, March 7, 1907.

In the matter of protests 53624 *b*, etc., of Geo. B. Ritchie & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise in question consists of flax noils. It was assessed for duty at the rate of $20 per ton under the provisions of paragraph 326 of the tariff act of 1897, which reads as follows:

326. Tow of flax, twenty dollars per ton.

The protestants claim that it is properly dutiable under paragraph 463 of said act at the rate of 10 per cent ad valorem. Paragraph 463 reads:

463. Waste, not specially provided for in this Act, ten per centum ad valorem.

In G. A. 5560 (T. D. 24963) the Board passed upon flax noils, holding them dutiable as tow of flax either directly or by similitude. On appeal to the circuit court for the southern district of New York, this decision was reversed. Ritchie *v.* United States (141 Fed. Rep., 664; T. D. 26461). From that decision there has been no appeal.

We find the merchandise the subject of these protests is flax noils. We hold it properly dutiable as waste not specially provided for under paragraph 463 at the rate of 10 per cent ad valorem.

The protests are sustained, the decisions of the collector reversed, and reliquidation accordingly will follow.

(T. D. 27998—G. A. 6559.)

Entireties—Rifles fitted with telescopic sights.

Telescopic sights severally designed and adapted only for use with a particular rifle, and not interchangeable with other rifles without a new and adequate adjustment thereto, attached to and forming a part of the firearms in question prior to exportation, are dutiable as parts of rifles at the rate of 25 per cent ad valorem under paragraph 157, tariff act of 1897, and not at 45 per cent ad valorem under paragraph 111 of said act as telescopes.—G. A. 5984 (T. D. 26209) and G. A. 6490 (T. D. 27760) followed; Schoverling *v.* United States (142 Fed. Rep., 302; T. D. 26972) distinguished.

United States General Appraisers, New York, March 8, 1907.

In the matter of protest 227835 of Von Lengerke & Detmold against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* This protest relates to certain telescopic sights for rifles, which were returned by the appraiser as telescopes and assessed with duty by the collector at the rate of 45 per

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cent ad valorem under paragraph 111, the importers claiming duty thereon at 25 per cent ad valorem, under paragraph 157 of the present tariff act, as parts of rifles.

The evidence shows, and we find as facts, that the disputed articles are optical instruments, and that the same are designed and adapted only for use in conjunction with the long-range rifles forming a part of the same importation. The evidence further shows that each of the sights in question had, prior to exportation, been attached and adjusted with great care to the particular rifle of which it was intended to form a part for the purpose of effecting a specific result, and that the said sights were not interchangeable, so as to enable them to be used with other rifles of the same make without a new and adequate adjustment in each case.

The question presented for determination by the Board, therefore, is: Are the goods specifically provided for as optical instruments, or are they entitled to classification as parts of rifles?

The telescope sights in dispute possess merely a single attribute of the optical instrument commonly and commercially known as the telescope, namely, by bending to a focus the rays of light reflected from the object aimed at, the latter is apparently brought very close to the person aiming the rifle. But in other respects the telescopic sight varies materially from the telescope. Instead of being held close to the eye, the normal position of its eyepiece when in use is 3 or 4 inches away, nor is there any arrangement of sliding draws, as in the telescope, by which its focus for different distances may be adjusted. The object glass of the telescope is relatively large and the eyepiece very small, whereas the objectives of these sights are small and the eyepieces large, in addition to which there are two cross wires situated immediately back of the object glass, centrally bisecting each other. The point of bisection of these wires performs the office of the front sight customarily fitted to rifles, and the telescopic sight is therefore equivalent to a combination rear and front sight, affording at the same instant the proper elevation of the barrel and a precise line, or "bead," upon the object aimed at.

By means of two catches underneath the sight and two corresponding catches on the rifle barrel, the sight is held firmly in place thereon; and it is made easily removable by providing the front catch with a snap, pressure upon which disengages the sight from the rifle.

The sights in question were, prior to exportation, fitted to and became a part of the rifles upon which they were designed to be used, and the fact that the sights and rifles were shipped to this country packed separately in the same case for safety in transportation, and that they were billed separately on the same invoice, does not take them out of the category of articles which are entireties.

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The issue involved in the present case differs from that presented in Schoverling *v.* United States (142 Fed. Rep., 302; T. D. 26972), wherein certain rubber recoil pads were held by the court not to be essential or necessary attachments for or parts of guns. Those pads contributed in no way to the efficiency of the firearms for which they were designed to be used, and their use was optional with the purchaser, who might effectively use any gun in conjunction with any such pad. But in the present case each of the sights in question is designed for a specific purpose when fitted to a particular rifle, for which use that rifle would be unserviceable and ineffectual without its individual sight.

We accordingly hold the rifles and telescopic sights therefor to be entireties; and on the authority of the principles enunciated in G. A. 5984 (T. D. 26209), G. A. 6490 (T. D. 27760), and the cases therein cited, we sustain the protest claiming 25 per cent ad valorem duty on the sights in question as parts of rifles, and reverse the decision of the collector in regard thereto.

(T. D. 27999.)

Abstracts of decisions of the Board of General Appraisers.

No. 14633.—Dressed Lava Stone.—Protest 208109 of J. W. Hampton, Jr., & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), March 4, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 4923 (T. D. 28030), relating to dressed lava stone.

No. 14634.—Floral Water.—Protest 222220 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), March 4, 1907. Opinion by McClelland, G. A.

Euler *v.* United States (147 Fed. Rep., 765; T. D. 27428) followed, relating to floral water.

No. 14635.—Jarrah Wood—Cabinet Wood.—Protest 223667 of Dutilh-Smith, McMillan & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 4, 1907. Opinion by McClelland, G. A.

The protest related to jarrah wood, classified as cabinet wood under paragraph 198, tariff act of 1897, and claimed to be dutiable under paragraph 195 as sawed lumber. Protest sustained. G. A. 6137 (T. D. 26669) and Abstract 11170 (T. D. 27331) followed.

No. 14636.—Kaolin.—Protest 204840 of M. Rosenbaum against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), March 4, 1907. Opinion by McClelland, G. A.

The merchandise, which was invoiced as paper filling, was held to have been properly classified as kaolin under paragraph 93, tariff act of 1897.

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No. 14637.—METAL-THREAD GOODS—SILK BELTINGS—MANUFACTURES OF SILK.—Protests 189912, etc., of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Fischer, G. A.

These protests related to goods classified under paragraphs 179 and 390, tariff act of 1897, relating, respectively, to metal-thread goods and silk goods. As claimed by the importers, a portion of the goods was held dutiable under paragraph 389 as beltings in part of silk under the authority of G. A. 6498 (T. D. 27780), and another portion consisting of bands was held dutiable as manufactures of silk under paragraph 391. In all other respects the assessment was affirmed.

No. 14638.—PICTORIAL POST CARDS.—Protests 226463, etc., of A. C. Bosselman & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Fischer, G. A.

G. A. 6369 (T. D. 27359) followed, relating to pictorial post cards.

No. 14639.—PHONOGRAPHS—ACCORDIONS—TOYS.—Protest 210714 of Samstag & Hilder Brothers against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Fischer, G. A.

The importers contended that phonographs and accordions were dutiable as toys under paragraph 418, tariff act of 1897. This contention was sustained as to the phonographs but overruled as to the accordions. G. A. 4855 (T. D. 22765) and Abstract 13914 (T. D. 27801) followed.

No. 14640.—SILK FABRICS—SILK BANDS.—Protests 52019*f*, etc., of Simpson, Crawford & Simpson against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Howell, G. A.

Protests sustained in part on the authority of G. A. 4435 (T. D. 21115) and G. A. 5937 (T. D. 26071), relating to silk fabrics.

No. 14641.—SILK FABRICS—MOIRE GOODS.—Protests 153381, etc., of H. Robinson against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Howell, G. A.

The importers contended that the goods were dutiable under the provision in paragraph 391, tariff act of 1897, for "Jacquard figured goods." The evidence showed that the goods were not made on looms with the Jacquard attachment, and that the moire effect thereon was simply a finish placed on the fabrics after weaving. Protests overruled.

No. 14642.—ORNAMENTS.—Protests 165184, etc., of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Howell, G. A.

Protests sustained on the authority of G. A. 5664 (T. D. 25254), relating to ornaments.

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No. 14643.—HATS.—Protest 206769 of R. L. Cochran Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Howell, G. A.

The protest related to hats which were held dutiable under paragraph 409, tariff act of 1897, a part as hats not trimmed and a part as hats trimmed.

No. 14644.—LACE WEARING APPAREL.—Protests 225186, etc., of Klauber, Horn & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Goldenberg Brothers & Co. *v.* United States (130 Fed. Rep., 108; T. D. 25220), relating to lace wearing apparel.

No. 14645.—FLAX FABRICS.—Protest 358 *h* of Hope & Trippe against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

The Board held the goods dutiable under paragraph 346, tariff act of 1897, as flax fabrics weighing less than 4¼ ounces per square yard.

No. 14646.—EMBROIDERY COTTON.—Protests 163634, etc., of F. B. Vandegrift & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

G. A. 5936 (T. D. 26070) followed, relating to embroidery cotton.

No. 14647.—COTTON YARN.—Protests 225277, etc., of Loeb & Schoenfeld Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

G. A. 6544 (T. D. 27915) followed, relating to cotton yarn used in machine embroidery.

No. 14648.—COTTON CLOTH.—Protest 240276 of W. B. Quaintance against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

As claimed by the importer, a portion of the goods was held to have been improperly subjected to the additional duty provided in paragraph 318, tariff act of 1897, for figured cotton.

No. 14649.—TOYS—CARNIVAL SUITS.—Protest 159031 of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

So-called carnival suits were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importer. Note G. A. 6527 (T. D. 27867).

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No. 14650.—WALL HANGINGS.—Protest 227169–23337 of Wakem & McLaughlin against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

The protest was sustained as to a portion of the goods on the authority of Abstract 13485 (T. D. 27719), relating to wall hangings.

No. 14651.—SPIRITS—RECIPROCITY.—Protest 217966 of Mouquin Restaurant and Wine Company (Limited) against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 4, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 6381 (T. D. 27256), relating to the application of the French reciprocal commercial agreement to the alcohol found in fruit preserved in spirits.

No. 14652.—PASTE BUTTONS.—Protests 218318, etc., of B. Blumenthal & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 4, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 6279 (T. D. 27061), relating to paste buttons.

No. 14653.—COTTON WASTE.—Protest 221226 of Maltus & Ware against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 4, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 6390 (T. D. 27453), relating to cotton waste.

No. 14654.—PROTEST ABANDONED.—Protest 225510 of F. W. Bird & Son against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by De Vries, G. A.

Protest abandoned; overruled.

No. 14655.—PROTESTS UNSUPPORTED.—Protests 226325, etc., of M. L. Eckstein *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 4, 1907. Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 14656.—PROTEST UNSUPPORTED.—Protest 225419 of Sinclair, Rooney & Co. against the assessment of duty by the collector of customs at the port of Buffalo.

Same as No. 14655 (*supra*).

No. 14657.—PROTEST UNSUPPORTED.—Protest 221724–23295 of N. Shure Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14655 (*supra*).

No. 14658.—PROTEST UNSUPPORTED.—Protest 223836 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14655 (*supra*).

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No. 14659.—PROTESTS UNSUPPORTED.—Protest 227062 of Friedman & Johnstone and protest 225473 of L. Erstein & Bro. Opinions by Howell, G. A.

Same as No. 14655 (*supra*).

No. 14660.—PROTESTS UNSUPPORTED.—Protest 225913 of O. H. Blell, protests 242374, etc., of H. B. Claflin Company *et al.*, protests 179763, etc., of M. J. Corbett & Co. *et al.*, protests 229898, etc., of D. G. Gardiner *et al.*, protest 213173 of Reichenbach & Co., protests 121428, etc., of F. Schulemann Company *et al.*, protest 224051 of Jas. F. White & Co., and protest 225754 of P. K. Wilson & Son. Opinions by De Vries, G. A.

Same as No. 14655 (*supra*).

No. 14661.—PROTEST UNSUPPORTED.—Protest 228517 of William H. Masson against the assessment of duty by the collector of customs at the port of Baltimore. Opinion by De Vries, G. A.

Same as No. 14655 (*supra*).

No. 14662.—PROTEST UNSUPPORTED.—Protest 242085-24185 of Mandel Brothers against the assessment of duty by the collector of customs at the port of Chicago. Opinion by De Vries, G. A.

Same as No. 14655 (*supra*).

No. 14663.—PROTEST UNSUPPORTED.—Protest 221190 of Hammill & Gillespie. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers). Opinion by McClelland, G. A.

Same as No. 14655 (*supra*).

No. 14664.—PROTEST UNSUPPORTED.—Protest 228477 of Maltus & Ware against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 4, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 14665.—PROTESTS UNSUPPORTED.—Protests 217562, etc., of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News.

Same as No. 14664 (*supra*).

No. 14666.—PROTESTS UNSUPPORTED.—Protests 194819, etc., of J. J. Moore & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 14664 (*supra*).

No. 14667.—WOOL HATS.—Protest 226606 of Balch, Price & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 5, 1907. Opinion by Lunt, G. A.

The protest related to hats which the Board held to have been properly classified as wool wearing apparel under paragraph 370, tariff act of 1897.

No. 14668.—FUR HAT BODIES.—Protest 226376 of J. & H. Rosenberg against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 5, 1907. Opinion by Lunt, G. A.

The protest related to fur hat bodies held to have been properly classified under paragraph 432, tariff act of 1897.

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No. 14669.—Flax Articles.—Protest 223977 of John McCann & Co. March 5, 1907.

Same as No. 14645 (*supra*).

No. 14670.—Waste—Flax Noils.—Protests 165884, etc., of Hughes Fawcett *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinion by De Vries, G. A.

Flax noils, classified as tow of flax under paragraph 326, tariff act of 1897, were held dutiable as waste under paragraph 463, as claimed by the importers. Ritchie *v.* United States (141 Fed. Rep., 664; T. D. 26461).

No. 14671.—Waste—Flax Noils.—Protests 178495, etc., of W. F. Corne *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14670 (*supra*).

No. 14672.—Cotton Damask.—Protest 203847 of Ballin & Taylor, protest 226832 of Henry Glass & Co., and protests 209174, etc., of Syndicate Trading Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinions by De Vries, G. A.

G. A. 6539 (T. D. 27890) followed, relating to cotton damask.

No. 14673.—Manufactures of Cotton.—Protests 223374, etc., of Neuss, Hesslein & Co. and protest 223925 of Stern Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinions by De Vries, G. A.

A portion of the goods was held dutiable as manufactures of cotton under paragraph 322, tariff act of 1897, as claimed by the importers.

No. 14674.—Cotton Cloth.—Protest 226858 of Kursheedt Manufacturing Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinion by De Vries, G. A.

The question before the Board was whether cotton cloth was colored, as classified, or unbleached, as claimed by the importers. Protest sustained in part.

No. 14675.—Cotton Yarn.—Protests 226866, etc., of Ludwig Littauer *et al.* March 5, 1907.

Same as No. 14647 (*supra*).

No. 14676.—Sugar—Dutiable Weight—Countervailing Duty.—Protests 48847*f*, etc., of American Sugar Refining Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 5, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of Franklin Sugar Refining Company *v.* United States (142 Fed. Rep., 376; T. D. 27027), relating to the dutiable weight of sugar to which countervailing duties are applicable.

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No. 14677.—CHERRIES IN MARASCHINO.—Protests 218109, etc., of Reiss & Brady *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 8 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 5, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6473 (T. D. 27690), relating to cherries in maraschino.

No. 14678.—PROTESTS ABANDONED.—Protests 157618, etc., of John Donat & Co. *et al.*, protest 198873 of Leon Rheims Company, and protest 226546 of Souvenir Post Card Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinions by Fischer, G. A.

Protests abandoned; overruled.

No. 14679.—PROTESTS ABANDONED.—Protest 223951 of Acker, Merrall & Condit Company and protests 225286, etc., of Ed. Maurer *et al.* Before Board 8 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 5, 1907.

Same as No. 14678 (*supra*).

No. 14680.—PROTEST ABANDONED.—Protest 214611 of Kirkman & Vail against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 5, 1907. Opinion by McClelland, G. A.

Protest abandoned; overruled.

No. 14681.—PROTESTS UNSUPPORTED.—Protests 1066 *h*, etc., of D. G. Gardiner, protests 224620 and 226642 of M. Gardner & Co., protests 225984, etc., of Knauth, Nachod & Kühne, protest 131482 of Charles F. L. Krogmann, protest 227494 of Lord & Taylor, protests 210966, etc., and 228122 of Mills & Gibb, protests 96478 *f*, etc., of Jules & Hugo Rosenberg, protest 223918 of Schoefield & Walter, protest 9070 *h* of Charles R. Waentig, protest 162188 of Wilmerding, Morris & Mitchell, and protests 195790, etc., of Thomas Young against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 5, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 14682.—PROTESTS UNSUPPORTED.—Protest 226809 of American Express Company, protest 165164 of Isler & Guye, protest 226512 of Morris European and American Express Company, and protests 225724, etc., of B. Shackman & Co. *et al.* Opinions by Fischer, G. A.

Same as No. 14681 (*supra*).

No. 14683.—PROTEST UNSUPPORTED.—Protest 74873 *f* of Spiegelberg & Co. Opinion by Howell, G. A.

Same as No. 14681 (*supra*).

No. 14684.—PROTESTS UNSUPPORTED.—Protests 218945, etc., of Park & Tilford *et al.* March 5, 1907.

Same as No. 14664 (*supra*).

No. 14685.—PINS—JEWELRY.—Protests 41698 *f*, etc., of A. J. Hague & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 7, 1907. Opinion by Sharretts, G. A.

The protests related to pins and other articles classified as jewelry under paragraph 434, tariff act of 1897. The various contentions made were disposed of by the Board on the authority of Abstract 5635 (T. D. 26248), G. A. 6330 (T. D. 27255), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390).

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No. 14686.—ORNAMENTS—JEWELRY.—Protests 44712*b*, etc., of Strawbridge & Clothier *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 7, 1907. Opinion by Sharretts, G. A.

The goods were classified as jewelry. A portion of them was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

No. 14687.—GRANITE MONUMENTS.—Protests 147352, etc., of Austin, Baldwin & Co. *et al.* against the assessment of duty by the collector of customs at the port New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 7, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Baldwin *v.* United States (T. D. 27802), relating to granite monuments.

No. 14688.—BOOKS PARTLY IN ENGLISH—PICTURE CATALOGUE.—Protest 224045 of F. von Marees against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 7, 1907. Opinion by Fischer, G. A.

The protest related to a picture-dealer's catalogue, claimed to be free of duty under the provision in paragraph 502, tariff act of 1897, for books printed exclusively in languages other than English. A sample of the books in question contains a large number of reproductions of pictures with a text in English, French, German, and Spanish, describing the pictures. Protest overruled.

No. 14689.—PENS CONTAINING DRY INK.—Protests 221684–23288, etc., of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 7, 1907.

The articles in controversy, which were classified as manufactures of metal under paragraph 193, tariff act of 1897, were claimed by the importers to have been improperly classified as entireties and to be dutiable in part under paragraph 186, relating to pens, and in part under paragraph 187, relating to penholders.

FISCHER, *General Appraiser:* * * * No evidence was offered by the importers, the case having been submitted for decision on the record and the official sample. We find that the articles are writing implements consisting of a pen point attached to which is a metal device for containing a small quantity of dry ink, the whole being inserted in a barrel, this in turn being attached to a holder. The article appears to be a substitute for a fountain pen and the attachment of the device mentioned to the pen point takes the latter article out of the class of "pens, metallic," as provided for in paragraph 186. It seems to us that the classification by the collector of the implements as entireties was proper and that his decision was correct.

No. 14690.—EMBROIDERED LEATHER BELTS.—Protest 209260 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 7, 1907. Opinion by De Vries, G. A.

The protest related to leather belts embroidered with silk, which the importers contended had been improperly subjected to the embroidery duty, under the proviso in paragraph 339, tariff act of 1897. Protest overruled on the authority of Lichtenstein Millinery Company *v.* United States (T. D. 27919).

No. 14691.—FIGURED COTTON CLOTH.—Protests 243522, etc., of M. Hefti *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 8, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

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No. 14692.—SUNN HEMP.—Protest 221860 of W. N. Proctor Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers), March 8, 1907. Opinion by De Vries, G. A.

The merchandise was found to be sunn hemp and was held free of duty accordingly under paragraph 566, tariff act of 1897, as claimed by the importers.

No. 14693.—PICTORIAL POST CARDS.—Protest 227380 of W. G. MacFarlane against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 11, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6369 (T. D. 27359), relating to pictorial post cards.

No. 14694.—JACQUARD NEEDLES.—Protest 220439 of North American Lace Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 11, 1907. Opinion by Fischer, G. A.

The Board overruled the importers' contention that Jacquard needles were dutiable as needles under paragraph 165, tariff act of 1897. Abstract 8432 (T. D. 26753) followed.

No. 14695.—FISHHOOKS.—Protest 226413 of Dame, Stoddard & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 11, 1907. Opinion by Fischer, G. A.

Protest sustained as to a portion of the goods on the authority of G. A. 6494 (T. D. 27764), relating to fishhooks.

No. 14696.—ORNAMENTED CARDS.—Protest 227073 of Kaufman & Strauss Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 11, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 5987 (T. D. 26212), relating to ornamented cards.

No. 14697.—DUTIABLE WEIGHT OF TOBACCO.—Protests 125698, etc., of F. Eckerson & Co. *et al.*, protests 126474, etc., of S. Grabosky *et al.*, and protests 126499, etc., of Theobald & Oppenheimer Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 11, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of Falk *v.* United States (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14698.—PROTESTS UNSUPPORTED.—Protests 126287, etc., of Geo. Nash & Co. and protest 222376 of Smith & Kaufman against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 11, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14699.—PROTEST UNSUPPORTED.—Protest 227125-23419 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14698 (*supra*).

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No. 14700.—PROTEST UNSUPPORTED.—Protest 230826 of Perry, Ryer & Co. against the assessment of duty by the collecter of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Sharretts, G. A., absent), March 11, 1907. Opinion by Lunt, G. A.

Protest overruled for want of merit.

No. 14701.—PROTESTS UNSUPPORTED.—Protests 230364, etc., of G. H. P. Todd against the assessment of duty by the collector of customs of the port of Detroit.

Same as No. 14701 (*supra*).

TREASURY DEPARTMENT, *March 13, 1907*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 28000.)

Gloves.

UNITED STATES *v.* TREFOUSSE. UNITED STATES *v.* PASSAVANT.

U. S. Circuit Court of Appeals, Second Circuit. January 18, 1907. Nos. 137 and 136 (suits 4129 and 4128).

LEATHER GLOVES—EMBROIDERY WITH MORE THAN THREE SINGLE CORDS OR STRANDS.

Leather gloves having upon them embroidery in three rows, but showing on the back of the gloves that each row presented the appearance of three-plait crochet work, the effect being produced by the needle with only one cord or strand of thread, *Held* not to be subject to the additional duty provided in paragraph 445, tariff act of 1897, for "all gloves stitched or embroidered with more than three single strands or cords."

APPEALS from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see 144 Federal Reporter, 708 (T. D. 27023), reversing a decision of the Board of United States General Appraisers, Abstract 8396 (T. D. 26753). The Board's opinion reads as follows:

MCCLELLAND, *General Appraiser:* These protests relate to leather gloves, which were assessed with cumulative duties under the provisions of paragraph 445, tariff act of 1897. The claim therein that not more than one of the said cumulative duties may legally be assessed upon leather gloves falling within two or more provisions of that paragraph was overruled in Douillet *v.* United States (133 Fed. Rep., 1007; T. D. 25811). See G. A. 6002 (T. D. 26241).

On the hearings three sample pairs of gloves were offered and received in evidence, being marked 101095, Exhibits 1, 2, and 3. The importer's witness then examined the invoices and pointed out certain items which he declared were represented by the samples in respect of the ornamentation on the back of the gloves. There was no effort to claim that any of the merchandise had been classified incorrectly except in this one respect, viz, that none of the items indicated by the witness as being represented by the exhibits was subject to the cumulative duty for stitching or embroidery prescribed in said paragraph 445. Some of the protests were abandoned in toto and others were partially abandoned, but our conclusion renders it unnecessary to distinguish between them.

Following the rule laid down in G. A. 5595 (T. D. 25038) for the ascertainment of the number of strands or cords upon a glove, we find that all of the gloves represented by the exhibits before us are embroidered with more than three single strands and are therefore subject to cumulative duties as assessed by the collector.

The protests are in all respects overruled and the collector's decision in each case is affirmed.

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In reversing this decision, it was observed by Judge Platt in the circuit court:

The Board of Appraisers overruled the protest in this way: They followed a rule which they had adopted in G. A. 5595 (T. D. 25088) for the ascertainment of the number of strands or cords upon a glove, and found that, by some peculiar method of reasoning, there were more than three single strands upon the gloves in question. It appears, however, that the same Board, in G. A. 4241 (T. D. 19945), held that certain leather gloves having upon them embroidery in three rows, but showing on the back of the gloves that each row presented the appearance of three-plait crochet work, the effect being produced by the needle with only one cord or strand of thread, as is shown by the stitching through and on the inside of the glove, were in fact not stitched or embroidered with more than three single strands or cords. This decision, upon appeal, was affirmed by Judge Wheeler in United States *v.* Robinson (124 Fed. Rep., 1013), and has been acquiesced in by the Government.

It would seem that the Board of General Appraisers in such a matter as this, when the gloves in respect to the manner of stitching are manifestly the same as those considered in G. A. 4241, ought to have followed the very clearly expressed and well-defined rule governing the provision found in paragraph 445.

The decision of the Board, so far as it finds that the goods in question are subject to a duty of 40 cents per dozen pairs for "all gloves stitched or embroidered with more than three single strands or cords," is reversed.

J. Osgood Nichols, assistant United States attorney, for the United States.

Brooks & Brooks (*Frederick W. Brooks* of counsel), for the importers.

Before WALLACE, LACOMBE, and TOWNSEND, Circuit Judges.

PER CURIAM: Decrees affirmed in open court.

(T. D. 28001.)

Forgings.

PROSSER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. February 20, 1907. Suit 4057.

1. MACHINED FORGINGS—MANUFACTURES OF STEEL.

In the provision in paragraph 127, tariff act of 1897, for "forgings * * * of whatever shape or whatever degree or stage of manufacture," the qualifying words relate to the process of forging rather than to any treatment subsequent thereto; and forgings which have been machined in addition to the original forging process are not within said paragraph, but are dutiable as articles composed of steel under paragraph 193.

2. GENERAL APPRAISERS—RULES—TRANSFER OF JURISDICTION;

Under regulations of the Secretary of the Treasury the General Appraisers adopted a rule for the avoidance of conflicting decisions, and in accordance with that rule a case which was the subject of a decision that had been prepared and signed, but not promulgated, by one of the Boards of General Appraisers, was assigned to another Board, which considered the case anew, giving both parties opportunity to be heard. *Held* that the rule was reasonable and that such procedure thereunder was valid.

3. SAME—SAME—APPROVAL BY SECRETARY OF TREASURY.

A rule of procedure was adopted by the General Appraisers which at the time of its adoption had not been authorized by the Secretary of the Treasury, but for which authority was given later. *Held* that the approval of the rule should be presumed.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6069 (T. D. 26477), which affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by Thomas Prosser & Son.

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Everit Brown, for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

HAZEL, *District Judge:* The merchandise in controversy consists of heavy forgings of steel, weighing from about 200 to 70,000 pounds, as follows: Crank shaft, piston rod, crosshead, crank pin, and connecting-rod forgings. The collector assessed duty thereon at the rate of 45 per cent ad valorem as manufactures of steel under the provisions of paragraph 193 of the tariff act of 1897, and such classification was sustained by the Board of General Appraisers. The importers claim the articles are dutiable under paragraph 127 of the same act, which (omitting nonessentials) reads:

> Forgings of iron or steel, or of combined iron and steel, of whatever shape or whatever degree or stage of manufacture, not specially provided for in this Act, thirty-five per centum ad valorem.

The articles are produced by forging—that is, a portion of the forgings are treated to a machine process which removes the rough or scaly surface and smooths it by planing, although by the process of planing they are not reduced wholly to their ultimate size. The piston-rod forgings have been rough turned or rough machined, as technically styled; the crank-axle forgings have been partly rough machined; and the cross head has been fully machined.

The first point insisted upon is that the Board of Appraisers which decided this controversy was without jurisdiction. The record shows that after the filing of the protest the case was regularly sent to Board No. 2 for decision, which Board heard the evidence and arguments of counsel and in due time prepared and signed a decision sustaining the position of the importers. Such proposed decision, however, was not handed down, for the reason that, after its submission to the general Board of Appraisers in accordance with the prescribed rules of that Board, it was the opinion of the majority of such general Board that the proposed decision was in conflict with prior decisions by the Board and by the Supreme Court of the United States. Thereafter, with the consent of Board No. 2, the protests were reassigned to Board No. 1 for decision. Board No. 1 subsequently decided the questions submitted *de novo*, the importers participating at the hearing; and from such decision this review is taken. It is objected by the importers that, as the protests were regularly referred to Board No. 2, there could be no transference to another Board of equal jurisdiction; that, as the different Boards of General Appraisers have coordinate jurisdiction, the Board which first obtains possession of the controversy is the legally constituted body to make the final disposition of the questions in dispute.

This objection must be overruled for the following reasons: By the customs administrative act (sec. 12) the Secretary of the Treasury is empowered to prescribe rules and regulations for the conduct of the business of the Board of General Appraisers; and by article 1726 of the Treasury regulations, as amended December 26, 1903, it was specifically provided that the Board of General Appraisers (which consists of nine members) shall adopt such rules as may be necessary to prevent the promulgation of conflicting decisions (T. D. 24861). On December 16, 1903, the following rule was adopted by the Board of General Appraisers:

> In order to prevent as far as possible the rendering of conflicting decisions in classification cases by the several Boards, all opinions, before promulgation, shall be submitted to the several Boards on duty at the port of New York, and if a majority of the members of either of said Boards are of the opinion that any proposed decision conflicts with another decision concurrent therewith, or theretofore made by the Board or by the United States courts, the president shall submit the same to all the members of the general Board present at the port of New York; and whenever a majority of said general Board so present shall be of the opinion that a conflict exists, the case shall be reassigned by the president for decision to a Board of three, the majority of whose members agree with the majority of said general Board.

The power to enact such rules seems not to have been authorized by the Secretary of the Treasury until December 26, 1903, subsequent to its adoption by the Board,

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and the point is urged that no ratification thereof is shown. A reasonable construction of section 12 of the administrative act is thought to justify the holding that the Secretary of the Treasury was empowered to authorize the Board to prescribe the rule quoted; and as it was in force at the time the protests herein were considered its approval may be fairly presumed.

It is next contended by the importers that the provisions of section 14 of the administrative act, substantially providing for a decision under a protest by a Board of three General Appraisers, are in conflict with the rule above quoted. It is true that the Board of General Appraisers to which the protest was originally submitted constituted a special tribunal and its jurisdiction was derived from the statute. Loeb *et al. v.* United States (107 Fed. Rep., 692). But I can not see any difficulty in investing another Board with jurisdiction, where, for example, the original Board is unable to agree, or where the orderly conduct of the business or disposition of the protest may so require. The reasonableness of a rule or regulation which tends to avoid or lessen conflicting decisions by the Board, or which points out the way to consistent adjudications of litigated questions, is to be commended. That such rule or regulation has the force of law if legally authorized and promulgated needs no citation of authorities. The objection to the jurisdiction of Board No. 1 is overruled.

Coming, now, to a consideration of the merits, the importers claim that the evidence introduced by the Government before the Board and in this court does not establish a commercial meaning of the words "forgings of iron or steel." This claim, as I understand it, is not refuted by the Government, which insists in that relation that it has not attempted to prove a trade designation, but simply gave evidence to show that the term "forgings of iron or steel," as commercially understood, did not include forgings that have been lathed or partly lathed, or rough machined or partly rough machined. It is further claimed by the Government that the term "forgings," as that term was defined by the Supreme Court in Saltonstall *v.* Wiebusch (156 U. S., 601), includes a metal which has undergone a process of heating and hammering, but not that upon which work has been done of the character disclosed by the proofs. The question presented for decision is whether the articles were "forgings of whatever shape or whatever degree or stage of manufacture," or whether they had lost their identity of forgings and had become manufactures of steel. Both sides practically agree that the crucial point hinges on the correct interpretation of the Wiebusch case, which was under the tariff act of 1883. It was there held that certain articles—pinchers, scythes, and grass hooks—which were manufactured of forged steel were dutiable as manufactures composed wholly or in part of steel; and it was proven, for instance, that after the pinchers were taken from the furnace they were treated by splitting, hammering, heating, and welding; and then, to produce a completed article, they were reheated, filed, rubbed, and polished with an emery wheel. The provision of the tariff act of 1883 contained these words:

> Forgings of iron and steel, or forged iron, of whatever shape, or in whatever stage of manufacture, not specially enumerated or provided for in this Act.

The Supreme Court held that the words "forged iron, of whatever shape, or in whatever stage of manufacture," were not to be taken in a limited sense but had a wider signification than the word "forgings;" and it accordingly held that the articles were not dutiable as forgings. In pointing out the meaning of the term "forgings," the court stated:

> But we do not understand the term "forgings" to be applicable to articles which receive treatment of a different kind than hammering before they are complete; such, for example, as grinding, tempering, or polishing, although the witnesses agree that welding and punching are properly forging processes. It may be well doubted, too, whether the word be applicable to such small articles as tools of trade or the ordinary implements of husbandry.

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In comparing the existing tariff act with the earlier, it will be observed that the words "forged iron" are omitted in the later enactment, while the words "or of combined iron and steel, of whatever shape or whatever degree or stage of manufacture," are included. By such alteration in the phraseology, however, the word "forgings" can not receive a broader scope than was given to it by the Supreme Court in the Wiebusch case or than it is entitled to receive by the ordinary meaning of the term. The use of the phrase quoted is thought to relate to the process of forging, and would seem to emphasize the intent of Congress to include in paragraph 127 all forgings, whether produced by heating and hammering or pressing or by equivalent methods. I think the principle enunciated in the Wiebusch case justifies the conclusion that the articles are no longer forgings but have become manufactures of metal.

The classification of the collector was right, and the decision of the Board is affirmed.

(T. D. 28002.)

Gauge of olive oil.

UNITED STATES *v.* ZUCCA & CO. UNITED STATES *v.* LUZZATTO.

U. S. Circuit Court, Southern District of New York. February 27, 1907. Suits 4475 and 4498.

1. GAUGE—OLIVE OIL—INVOICE DESCRIPTION—CONCLUSIVENESS.

The invoice description of olive oil as being contained in gallon tins is not to be presumed to have been used in the sense of implying that exactly a gallon is contained in each tin; and such description is not conclusive against the importer as fixing as the dutiable quantity an amount greater than that actually imported.

2. SAME—PRESUMPTION OF CORRECTNESS.

The method employed by customs officers in ascertaining the quantity of merchandise imported should not be disturbed except upon a clear showing of unfairness or injustice.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as G. A. 6416 (T. D. 27556), reversed the assessment of duty by the collector of customs at the port of New York on importations by Zucca & Co. and G. Luzzatto. The merchandise consisted of olive oil, dutiable at 50 cents per gallon under paragraph 40, tariff act of 1897. The oil was in tin cans, described in the invoices as 1-gallon, 2-gallon, and 5½-gallon cans. The Board held that the duty should be based on the quantity actually imported and not on the capacity of the tins, and that such actual quantity should be ascertained by weight on the basis of 7.56 pounds per gallon. Note T. D. 27573, directing the application for review.

D. Frank Lloyd, assistant United States attorney, for the United States.

Everit Brown, for the importers.

HOUGH, *District Judge:* I am of opinion that the word "gallone," used in the Italian invoices, does not mean and does not purport to mean "gallon" in any other sense than the words "quart" and "pint" are habitually used with reference to bottled liquors. There is no pretense that the "gallon tin" contained exactly a gallon, any more than under the known conditions of trade a quart bottle of liquor is held out to contain a quart.

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The duty of the Government officers is to ascertain as nearly as possible the actual quantity imported in gallons, and the method employed by the administrative officials should not be disturbed except upon a clear showing of unfairness or injustice. I incline to the opinion that the method adopted by the General Appraisers is the most accurate. But whether that be true or not the testimony in this case is not sufficient to disturb it, there being no proof at all that the amount on which duty has been exacted was less than the amount actually coming into the country.

I think this case is the converse of Giglio v. United States (91 Fed. Rep., 758), but is governed by the same principle—i. e., that the testimony does not give any guide to greater accuracy and stricter justice than has been exercised by the General Appraisers. Their decision is therefore affirmed.

(T. D. 28003.)

Bromofluorescic acid.

KUTTROFF v. UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 5, 1907. No. 190 (suit 3651).

BROMOFLUORESCIC ACID—COAL-TAR COLOR OR DYE.

Bromofluorescic acid is dutiable as a coal-tar color or dye under paragraph 15, tariff act of 1897.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see 147 Federal Reporter, 758 (T. D. 27427), reversing a decision of the Board of United States General Appraisers, G. A. 5766 (T. D. 25523), which had reversed the assessment of duty by the collector of customs at the port of New York on material imported by Kuttroff, Pickhardt & Co.

The importations in controversy consist of a coal-tar preparation known as bromofluorescic acid. The case turns on the construction of paragraph 15, tariff act of 1897, which reads as follows:

15. Coal-tar dyes or colors, not specially provided for in this Act, thirty per centum ad valorem; all other products or preparations of coal tar, not colors or dyes and not medicinal, not specially provided for in this Act, twenty per centum ad valorem.

The Government contended that the article was properly classified under the first provision as a color or dye; the importers that it is not a color or dye, and was therefore subject to the latter provision.

Curie, Smith & Maxwell (*W. Wickham Smith* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney (*Charles Duane Baker* on the brief), for the United States.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: Decision affirmed, the majority of the court concurring in the opinion below, and Judge Lacombe concurring in the result because the tariff act was passed after and with full knowledge of long-continued departmental construction classifying this substance as a color or dye.

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(T. D. 28004.)

Wafers.

UNITED STATES *v.* MEADOWS.

U. S. Circuit Court of Appeals, Second Circuit. March 5, 1907. No. 183 (suit 3728).

WAFERS—BISCUITS—CONFECTIONERY—UNENUMERATED ARTICLES.

Wafers or biscuits containing a large proportion of sweetening and a small proportion of pastry, *Held* not to be dutiable as "confectionery" under paragraph 212, tariff act of 1897, either directly or by similitude, but to be dutiable as unenumerated manufactured articles under section 6.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see 147 Federal Reporter, 757 (T. D. 27448), affirming a decision of the Board of United States General Appraisers, G. A. 5880 (T. D. 25731), which had reversed the assessment of duty by the collector of customs at the port of New York on articles imported by Thomas Meadows & Co.

The subject of these proceedings consists of so-called Arctic and President wafers and Acorn and Philippine biscuits, containing a large proportion of sweetening and a small proportion of pastry. The Government contended that they had been properly classified under paragraph 212, tariff act of 1897, as "confectionery," either directly or by similitude, while the importers urged that the Board and the circuit court had properly held them dutiable as unenumerated manufactured articles under section 6.

D. Frank Lloyd, assistant United States attorney, and *Earl D. Babst*, special assistant United States attorney, for the United States.

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: Decision affirmed on opinion below.

(T. D. 28005.)

Steel.

BOKER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. March 4, 1907. Suit 3923.

STEEL STRIPS—"SHEET."

In construing the provisions for "sheet steel in strips" in paragraph 124, tariff act of 1894, and paragraph 137, tariff act of 1897, *Held* that the term "sheet" does not include coils of thin steel varying in length from 50 to 200 feet and in width from less than an inch to about 6 inches, and that such material is subject to the provisions of paragraphs 122 and 135 of said acts, respectively, for "steel in all forms and shapes, not specially provided for."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 5929 (T. D. 26063), affirming the assessment of duty by the collector of customs at the port of New York on merchandise imported by Hermann Boker & Co.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

HOUGH, *District Judge:* The subjects of controversy are coils of thin steel varying in length from 50 to 200 feet, and in width from less than an inch to about 6 inches.

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The collector assessed duty under paragraph 124 of the tariff act of 1894 and paragraph 137 of the act of 1897, declaring the importations to be "sheet steel in strips," while the importers contend that duties should have been laid under paragraph 122 of 1894 and paragraph 135 of 1897, upon "steel in all forms and shapes, not specially provided for." The General Appraisers have upheld the collector.

It is not denied that the exact article now under consideration has been held by the circuit court of appeals for this circuit to be dutiable as "steel in all forms and shapes" under paragraph 135 (Boker *v.* United States, 124 Fed. Rep., 59); but the Board has departed from that ruling because it believed that the testimony there presented to the court was "grossly misleading." This means that the protestant in the case cited (who occupies the same position in this case) has varied his evidence in such wise that it is impossible to tell whether he falsified in 124 Federal Reporter or in this litigation.

Much additional testimony has been taken in this court. Boker seems to me unworthy of belief, and I therefore leave his statements entirely out of account. He, however, represents others in this litigation, and I can not think it proper to punish them for the untruthfulness of their agent; and the decision below is, I think, reached by accepting as accurate Boker's statements when they agree with governmental contention and rejecting them when they do not. Upon the evidence other than Boker's, I think the conclusion announced in 124 Federal Reporter, 59, fully warranted.

If the whole question, however, be regarded as reopened by the tergiversations of Boker, I think the phrase "sheet steel in strips" should be regarded as descriptive, and not dependent for meaning on loose and often biased testimony of commercial usage. It should be regarded as descriptive, because every word in the phrase accurately refers to a quality or characteristic easily recognized and expressed in plain and simple language. An article 200 feet long, 6 inches wide, and very thin, may be of steel, but it is not a "sheet" of steel, and such word is absurd as applied thereto. It may be a "strip," but it is not, never was, and can not be without further division "in strips." Neither can such article ever be described as "sheet steel in strips," because there never was a sheet from which the strips were made.

The protest is sustained.

(T. D. 28006.)

Steel wool.

UNITED STATES *v.* BUEHNE STEEL WOOL COMPANY. BUEHNE STEEL WOOL COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. March 5, 1907. Suits 4415 and 4389.

STEEL WOOL—FORM OF STEEL—WIRE ARTICLES.

Steel wool is dutiable under the provision in paragraph 135, tariff act of 1897, for "steel in all forms and shapes," rather than under paragraph 137 as articles made from wire or under paragraph 193 as manufactures of steel.

ON application for review of a decision of the Board of United States General Appraisers.

[Cross appeals; decision adverse to the appellant in each case.]

For decision below see G. A. 6406 (T. D. 27536), in which the Board of General Appraisers, one member dissenting, sustained the less favorable of the two contentions made by the importers against the assessment of duty by the collector of customs at the port of New York. The authority for this decision was Buehne *v.* United States (140 Fed. Rep., 772; T. D. 26452), which reversed a former decision of the Board, G. A. 5927 (T. D. 26061), and the appeals from which were dismissed by the circuit court of appeals (145 Fed. Rep., 1021, 1023; T. D. 27230).

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These proceedings involve the construction of the following provisions of the tariff act of 1897:

193. Articles or wares not specially provided for in this Act, composed wholly or in part of iron, steel, * * * or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

135. Steel ingots, cogged ingots, blooms, and slabs, by whatever process made; die blocks or blanks; billets and bars and tapered or beveled bars; mill shafting; pressed, sheared, or stamped shapes; saw plates wholly or partially manufactured; hammer molds or swagged steel; gun-barrel molds not in bars; alloys used as substitutes for steel in the manufacture of tools; all descriptions and shapes of dry sand, loam, or iron-molded steel castings; sheets and plates and steel in all forms and shapes not specially provided for in this Act.

137. * * * Articles manufactured from * * * steel * * * wire shall pay the rate of duty imposed upon the wire used in the manufacture of such articles, and in addition thereto one and one-fourth cents per pound. * * *

The Board held the merchandise in controversy (steel wool) to be dutiable under the second of these provisions; the Government contends (T. D. 27547) that it was properly classified under the first, and the importers assign as error the failure of the Board to sustain their alternative contention under the third.

J. Osgood Nichols, assistant United States attorney, and *W. Wickham Smith*, for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

HOUGH, *District Judge:* Study of the printed record confirms the impression that this case requires and will receive decision by the high appellate tribunals. I find nothing in this record, however, which enlarges previous knowledge as to the origin, nature, manufacture, or use of "steel wool." All that is newly brought forwarded is a technical description or explanation of the articles specifically enumerated in paragraph 135 of the tariff act of 1897, made by men for the most part engaged in the trades of manufacturing or selling them.

The argument based upon such evidence is not really that courts and appraisers have hitherto been misled as to the nature of steel wool, but that they have not given sufficient importance to the nature of the articles specifically enumerated in paragraph 135; and it is strenuously urged that had such due consideration been given, it would have appeared that the catalogue of articles contained in that paragraph comprises the cruder or simpler products of a rolling mill, and that therefore the catch-all clause thereof should not be extended to include so highly manufactured an article as is here under consideration—i. e., steel wool or steel shavings.

It seems to me going too far to describe the articles of steel specifically enumerated in paragraph 135 as "crude" or even "simple," for many of them are of complex design, and all presuppose great inventive and mechanical skill and are finished or completed in the sense that they are ready for the markets of the world. But it is true that as a class they are, though the finished products of the mill, but the raw material for some other metal industry—for the machine shop or the builder. No article there enumerated is ordinarily used by the final consumer, or put to its ultimate use by the name or in the shape described by the name used in paragraph 135.

If, therefore, the material of a steel ingot (dutiable under paragraph 135), after becoming a wire rod (dutiable under paragraph 136), and next wire (dutiable under paragraph 137), and finally steel wool, legally reverts in its ultimate form to the category from which it started (as it does by being considered a "form or shape of steel"), it is certainly difficult to see how any manufacture wholly of steel can ever be assigned to paragraph 193.

In truth an "article * * * composed wholly * * * of steel" is necessarily a "form or shape of steel." To be sure, it is shown in this case that the word "shape" has a technical meaning and is applied to certain standard products of structural steel material—e. g., tees, angle bars, bulbs, etc.—but no manufacturer could fill an order

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for steel *forms* or "forms of steel," so that the confusion between the two paragraphs obviously exists, unless the rule of *ejusdem generis* be applied to paragraph 185.

With the Appraisers who filed the decision appealed from I feel the force of this reasoning, but perceive no facts in the present record authorizing a departure from 140 Federal Reporter, 772 (T. D. 26452), while the legal reasoning above outlined can not be reconciled with United States *v.* Binney (82 Fed. Rep., 992). It follows that the appeal of the United States can not be sustained in this court.

The point raised by the importers' appeal has been decided adversely to it in previous cases (140 Fed. Rep., 772; T. D. 26452), and it does not, in my opinion, bear further argument.

The importers' appeal is denied.

(T. D. 28007.)

Catheters.

UNITED STATES *v.* JOHNSON.

U. S. Circuit Court of Appeals, Second Circuit. March, 5, 1907. No. 164 (suit 4077).

COMPONENT MATERIAL OF CHIEF VALUE—RULE FOR DETERMINING—CATHETERS.

In construing the provision in section 7, tariff act of 1897, that, in determining the component material of chief value in imported merchandise, the basis shall be the ascertained value of such material in its condition as found in the article, *Held* (1) that this refers to the material as found when originally put into the article, and not the state to which it may be brought by the labor afterwards bestowed upon it, and (2) that articles (catheters, etc.) composed of a cotton core covered with varnish, the value of the cotton being greater than that of the varnish, should be considered as composed in chief value of cotton, regardless of the amount of labor applied to any of the various materials during the process of manufacture.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see 146 Federal Reporter, 148 (T. D. 27185), reversing a decision of the Board of United States General Appraisers, G. A. 6112 (T. D. 26609), which had affirmed the assessment of duty by the collector of customs at the port of New York on catheters and similar articles imported by Johnson & Johnson.

J. Osgood Nichols, assistant United States attorney, for the United States.

Hatch & Clute (*J. Stuart Tompkins* of counsel), for the importers.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

WALLACE, *Circuit Judge:* This appeal involves the application of section 7 of the tariff act of 1897, which provides that each and every imported article not enumerated in the act shall be assessed for duty at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and that the words "component material of chief value" shall be held to be that component material which shall exceed in value any other single component material of the article, and the value of the component material shall be determined by the ascertained value of such material in its condition as found in the article.

The importations were nonenumerated articles composed of a tubular core of cotton (some of them silk), and having superimposed upon the core several coatings of varnish. The question is which of the component materials is the one of chief value? The articles were made in the following manner: The manufacturer first makes a tubular cotton core of the desired length and diameter; and he then prepares a varnish made of copal gum and linseed oil. The cotton core is dipped into this varnish, and when the varnish has dried sufficiently the workmen manipulate it by hand to bring the varnish to the required degree of flexibility and smoothness. These dippings and manipulations by the workmen are repeated several times until the varnish is so tempered as to

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give the superimposed coatings the proper degree of stiffness and flexibility. Then the varnish is polished by the workmen by hand with pumice stone and cloth, in order to give it finally the proper degree of smoothness. According to the evidence the value of the cotton cores thus used, which exceeds the value of the silk cores, is 3.86 francs per hundred. The value of the varnish, including that of the labor bestowed in combining the oil and the copal, is 1.75 francs. The value of the labor of manipulating the several coatings so as to make the final and complete coating is 15 francs.

The importers insist that, because the value of the varnish, after it has been finally applied to the articles, is 16.75 francs, the varnish is the component of chief value. The circuit court sustained this contention.

Whether the component materials be regarded as cotton and varnish, or as cotton, copal, and oil, we are of the opinion that the cotton is to be regarded as the component material of chief value. It is true that the value of the material is to be ascertained in its condition as found in the article; but this means in the state in which it is found when it is originally put into the article and not in the state to which it may be brought after it has been put there by the labor and skill subsequently bestowed upon it. The material may have been, and generally has been, advanced from its crude state by labor and skill to a condition in which it is fit for use in the article which is to be wholly or in part manufactured from it; and the meaning of the statute is that its value is to be ascertained not by that of its natural state or its original condition, but by that of its condition when actually used in manufacturing the particular article. Under previous tariff acts it had sometimes been contended that in arriving at the value of the component material the test was to ascertain its value in the state in which the manufacturer had received it and before any enhancement derived from any work or labor expended upon it in bringing it to a condition fit for use in the particular article manufactured; but in Seeberger *v.* Hardy (150 U. S., 420) the court held that the value of the respective component materials was to be ascertained at the time "when they were in such condition that nothing remained to be done upon them except putting them together" to make the particular article. The words "in the condition as found in the article" were doubtless used by Congress to embody this construction in the statute. This interpretation of the statute is consistent with that placed upon it by this court in United States *v.* Hoeninghaus (137 Fed. Rep., 478; T. D. 26125), where we held that the value of the component material as found in the article included the cost of bringing the material to the proper shape for its use in the specific article, which in that case included the cost of warping the silk, a process preliminary to the weaving process.

The judgment is reversed.

(T. D. 28008.)

TREASURY DEPARTMENT, *March 13, 1907.*

The appended memorandum (supplemental to T. D. 27666) of recent court decisions in customs cases, not previously included in Treasury Decisions, is published for the information of officers of the customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

Suits 1390-2.—LEAF TOBACCO.—United States *v.* Rothschild & Bro. (8 cases). United States circuit court, eastern district of Michigan, December 10, 1906. Nos. 8227-9. On application for review of decisions of the Board of United States General Appraisers.

Decisions *reversed. In re* Mamara, G. A. 4861 (T. D. 22784), and Rothschild *v.* United States (179 U. S., 468) followed, relating to the classification of mixed wrap per and filler tobacco. The decisions under review were rendered May 18, 1898.

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Suits 1712 and 1733.—CUBAN TOBACCO.—I. Kaffenburgh & Sons *v.* United States (2 cases). United States circuit court, district of Massachusetts, September 13, 1906. Nos. 84 and 98. On application for review of decisions of the Board of United States General Appraisers.

Decisions *reversed* by consent, judgment being given for a portion of the importers' claims. Their contention was that the merchandise in controversy (tobacco) was imported from Cuba and was therefore subject to the reduction of duties provided thereon in the existing treaty with that country. For decisions below see Abstract 4827 (T. D. 26072) and Abstract 6956 (T. D. 26449).

Suit 1737.—CUBAN TOBACCO.—I. W. Kaffenburgh & Sons *v.* United States. United States circuit court, district of Massachusetts, September 13, 1906. No. 103. On application for review of a decision of the Board of United States General Appraisers.

Dismissed by agreement. The importers made the same contention as in suits 1712, etc. (*supra*). For decision below see Abstract 7677 (T. D. 26649).

Suit 1855.—LEAD BUCKLES.—Stone & Downer *v.* United States. United States circuit court, district of Massachusetts, November 26, 1906. No. 238. On application for review of a decision of the Board of United States General Appraisers.

Dismissed by agreement. The importers contended that so-called lead buckles, classified under the provision in paragraph 182, tariff act of 1897, for "lead in any form not specially provided for," were properly classifiable under the provision in paragraph 193 for articles of lead, wholly or partly manufactured. For decision below see G. A. 6410 (T. D. 27540).

Suits 1876-8. — AMERICAN GOODS RETURNED.—E. R. Dalbey & Co. *v.* United States (1876-7, 2 cases) and Pass City Foundry and Machine Company *v.* United States (1878). United States circuit court, western district of Texas, October 2, 1906. Nos. 437-9. On application for review of a decision of the Board of United States General Appraisers.

Dismissed, because the proceedings were not begun within the time prescribed by section 15, customs administrative act of 1890. The importers' contention was that the merchandise was free of duty as American goods returned under paragraph 483, tariff act of 1897. For decision under review see Abstract 12255 (T. D. 27493).

Suit 1880.—PICTORIAL CARDS.—Fredrik Peterson *v.* United States. United States circuit court, district of Massachusetts, September 26, 1906. No. 226. On application for review of a decision of the Board of United States General Appraisers.

Discontinued on motion of importer. Pictorial postal cards, classified as printed matter under paragraph 403, tariff act of 1897, were claimed by the importer to be dutiable as lithographic prints under paragraph 400. This contention the Board overruled for want of evidence. For decision below see Abstract 11635 (T. D. 27393).

Suit 1886.—MARBLE ALTAR—WORK OF ART.—E. Battelli *v.* United States. United States circuit court, district of Massachusetts, October 26, 1906. No. 245. On application for review of a decision of the Board of United States General Appraisers.

Decision reversed by agreement, on the authority of the Secretary of the Treasury. The importer contended that a marble altar was free of duty under paragraph 703, tariff act of 1897, as a work of art for presentation. The Board had overruled this contention on the ground that article 569, Customs Regulations of 1899, had not been complied with. For decision below see G. A. 6485 (T. D. 27590).

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Suit 3358.—SILKS IN THE GUM.—C. B. Richard & Co. *v.* United States. United States circuit court, southern district of New York, February 18, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *reversed* by consent, on the authority of Mendelson *v.* United States (T. D. 27898). The goods were held dutiable as silk fabrics in the gum, under paragraph 387, tariff act of 1897. The decision below was made March 16, 1903.

Suits 3523, 3537, and 3545.—PARALDEHYD.—United States *v.* Emil Levi (2 cases, 3523 and 3537) and United States *v.* Merck & Co. (3545). United States circuit court of appeals, second circuit, February 1, 1907. Appeals from the circuit court of the United States for the southern district of New York.

Dismissed by consent on instructions of the Attorney-General. The question was the same as that involved in Merck *v.* United States (147 Fed. Rep., 895; T. D. 27002), relating to paraldehyd. For decision below see T. D. 27397, reversing Abstract 741 (T. D. 25110), Abstract 1092 (T. D. 25239), Abstract 1202 (T. D. 25261), and Abstract 1473 (T. D. 25312).

Suits 3645 and 3650.—INCRUSTED STONES.—United States *v.* R. A. Breidenbach (2 cases). United States circuit court, southern district of New York. February 26, 1907. On application for review of decisions of the Board of United States General Appraisers.

Decisions *affirmed* by consent. United States *v.* Downing (144 Fed. Rep., 1022; T. D. 27193) followed. For decisions below see Abstract 2507 (T. D. 25513) and Abstract 2690 (T. D. 25538), in which incrusted stones were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897.

Suit 3652.—COTTON DAMASK ARTICLES.—D. Strachan *v.* United States. United States circuit court, southern district of New York, February 19, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *reversed* by consent. Cotton damask articles were held dutiable as "cotton table damask" under paragraph 321, tariff act of 1897, as claimed by the importer. Dunham *v.* United States (T. D. 27805) followed. For decision below see Abstract 2672 (T. D. 25526).

Suit 3714.—CUBAN TREATY.—United States *v.* Benjamin H. Howell, Son & Co. United States Supreme Court, October 14, 1906. No. 160. Appeal from the circuit court of the United States for the southern district of New York.

Decision *reversed* on confession of errors by the importers and motion to reverse and remand the case to the circuit court. The case involved the question of the construction of the Cuban reciprocity treaty. Note United States *v.* American Sugar Refining Company (202 U. S., 563; T. D. 27410) and Franklin Sugar Refining Company *v.* United States (202 U. S., 580; T. D. 27412). For decision below see T. D. 26545, reversing Abstract 2915 (T. D. 25600).

Suit 3722.—WEIGHT ON WITHDRAWAL FROM WAREHOUSE.—American Cigar Company *v.* United States. United States circuit court, southern district of New York, February 11, 1907. Before Hough, District Judge.

Decision *affirmed* by consent. United States *v.* Falk (T. D. 27832) followed, in which it was held that goods entered in bond were dutiable on the basis of their weight at the time of entry rather than of withdrawal. For decision below see Abstract 3307 (T. D. 25697).

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Suits 3990-2 and 3994-8.—COTTON DAMASK ARTICLES.—Thomas Wilson & Co. *v.* United States (3990), Duff & Benton *v.* United States (3991), Tefft, Weller & Co. *v.* United States (3992), Dunham, Buckley & Co. *v.* United States (3994), Charles R. Waentig *v.* United States (3995), Thomas Young *v.* United States (3996), John Graham & Co. *v.* United States (3997), and D. Strachan *v.* United States (3998). United States circuit court, southern district of New York, February 19, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *reversed* by consent. Cotton damask articles were held dutiable as "cotton table damask" under paragraph 321, tariff act of 1897, as claimed by the importers. Dunham *v.* United States (T. D. 27805) followed. For decision below see G. A. 6010 (T. D. 26266).

Suits 4159-61 and 4178.—FERROS.—United States *v.* Hensel, Bruckmann & Lorbacher (4159), United States *v.* F. Behrend (4160), and United States *v.* Goldschmidt Thermit Company (2 cases, 4161 and 4178). United States circuit court, southern district of New York, February 20, 1907. On application for review of decisions of the Board of United States General Appraisers. Before Hough, District Judge.

Decisions *affirmed* by consent. United States *v.* Roessler (187 Fed. Rep., 770; T. D. 26127) followed. For decisions below see G. A. 6227 (T. D. 26901) and Abstract 9750 (T. D. 27022), holding chromium, chrome metal, chromium metal, ferrochromium, ferrotitanium, manganese, manganese metal, molybdenite, molybdenum, and tungsten metal dutiable as ferromanganese by similitude under paragraph 122, tariff act of 1897.

Suit 4208.—SINGAPORE BUFFALO HIDES.—Baeder, Adamson & Co. *v.* United States. United States circuit court, southern district of New York, February 19, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Argued; decision *reversed* on the authority of United States *v.* Winter (134 Fed. Rep., 841; T. D. 25901). The goods consisted of Singapore buffalo hides, which were held free of duty under paragraph 664, tariff act of 1897, as hides not specially provided for, as contended by the importers. For decisions below see Abstract 9899 (T. D. 27087).

Suit 4247.—VULCAN BLACK.—P. H. Petry & Co. *v.* United States. United States circuit court, southern district of New York, February 11, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *reversed* by consent, the merchandise being shown to be similar to that covered by Abstract 13404 (T. D. 27705), which was held dutiable as lampblack under paragraph 47, tariff act of 1897. For decision below see Abstract 10968 (T. D. 27309).

Suit 4248.—DYERS' STICKS.—United States *v.* A. De Ronde & Co. United States circuit court, southern district of New York, February 15, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *affirmed* by consent. United States *v.* Knipscher & Maas Silk Dyeing Company (T. D. 27855) followed. For decision below see Abstract 11128 (T. D. 27331), relating to dyers' sticks.

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Suit 4251.—DYERS' STICKS.—United States *v.* Weidman Silk Dyeing Company. United States circuit court, southern district of New York, February 21, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent. United States *v.* Knipscher & Maas Silk Dyeing Company (T. D. 27855) followed. For decision below see Abstract 11127 (T. D. 27331) relating to dyers' sticks.

Suit 4262.—PYROXYLIN SMOKERS' ARTICLES.—United States *v.* Schrader & Ehlers. United States circuit court, southern district of New York, January 29, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent, on the authority of United States *v.* Knauth (T. D. 27769), relating to pyroxylin smokers' articles. For decision below see Abstract 11234 (T. D. 27348).

Suits 4380-1 and 4507.—PREMATURE PROTEST.—G. Falk & Bro. *v.* United States (4380 and 4507, 2 cases) and American Cigar Company *v.* United States (4381). United States circuit court, southern district of New York, February 11, 1907. On application for review of decisions of the Board of United States General Appraisers. Before Hough, District Judge.

Decisions *affirmed* by consent, on the authority of American Cigar Company *v.* United States (146 Fed. Rep., 484; T. D. 27036), relating to the time of filing protests claiming merchandise dutiable according to its weight at the time of withdrawal from warehouse. For decisions below see G. A. 6396 (T. D. 27486) and Abstract 12541 (T. D. 27561).

Suit 4508.—PREMATURE PROTEST.—American Cigar Company *v.* United States. United States circuit court, southern district of New York, February 14, 1907 On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *affirmed* by consent. For decision below see Abstract 12541 (T. D. 27561), holding, on the authority of American Cigar Company *v.* United States (146 Fed. Rep., 484; T. D. 27036), that the protests in question had been prematurely filed.

Suit 4510.—PREMATURE PROTEST.—H. M. Duys & Co. *v.* United States. United States circuit court, southern district of New York, February 15, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *affirmed* by consent. For decision below see Abstract 12541 (T. D. 27561), holding, on the authority of American Cigar Company *v.* United States (146 Fed. Rep., 484; T. D. 27036), that the protests in question had been prematurely filed.

Suit 4618.—BEADS.—Goldberg & Co. *v.* United States. United States circuit court, southern district of New York, February 19, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Hough, District Judge.

Decision *affirmed* by consent. For decision below see Abstract 13034 (T. D. 27649), holding beads not to be dutiable under paragraph 408, tariff act of 1897, as beads not threaded or strung.

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(T. D. 28009.)

Clapboards, beveled, sided, etc.

Clapboards not exceeding 4 feet in length, $1.50 per thousand pieces, under paragraph 199, tariff act of 1897. All other weatherboarding, whether known as beveled siding, drop lap siding, novelty siding, etc., dutiable under paragraph 195 of the said act.

TREASURY DEPARTMENT, *March 13, 1907.*

SIR: The Department duly received your letter of October 27 last, in which, replying to its inquiry as to the practice at your port in the classification of "clapboards" and "drop lap siding," you state that it is your practice to classify clapboards under paragraph 199 of the tariff act at the rate of $1.50 per thousand boards, and this without reference to the length, breadth, or thickness of the boards.

The question of the proper classification of weatherboarding has been under consideration and investigation by the Department for some time, and from the reports received from customs officers along the northern frontier and correspondence submitted therewith, the fact has been developed that while the term "clapboard" has no well-defined meaning, its use is generally confined to the northeastern part of the country and is usually limited to beveled siding 4 feet long imported from lower Canada into the collection districts of Maine and is sold on the basis of 1,000 pieces. Beveled siding imported through the ports on the northern and northwestern frontiers is usually listed as such, exceeds 4 feet in length, and is sold on the basis of 1,000 feet.

It further appears that the clapboards, 4 feet long, imported into Maine, are classified under paragraph 199 at the rate of $1.50 per thousand pieces. Beveled siding exceeding 4 feet in length, imported through the ports along the northern frontier, is variously classified; at some ports at the rate of $1.50 per thousand feet under paragraph 199, and at others at the rate of $1.50 per thousand clapboards, and, in determining the number of pieces, the clapboard is construed to be 4 feet long—i. e., a board 16 feet long is treated as four clapboards.

It is clear from the foregoing that there is no uniformity of action in the classification of weatherboarding, described as clapboarding and beveled siding, and to the end that there may be harmony in this regard, you are instructed to limit the application of paragraph 199 to beveled siding not exceeding 4 feet in length imported through your port.

All other weatherboarding, whether known as beveled siding, drop lap siding, novelty siding, etc., should be classified as lumber at the appropriate rates provided in paragraph 195 of the said act.

Respectfully, JAMES B. REYNOLDS.

(39226.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Ogdensburg, N. Y.*

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(T. D. 28010.)

Molders' patterns—Patterns for machinery.

Petition for a writ of certiorari in United States *v.* R. Hoe & Co. (suit 3773), involving the classification of molders' patterns, denied.

TREASURY DEPARTMENT, *March 14, 1907.*

SIR: The Department is in receipt of a letter, dated the 18th ultimo, from the Attorney-General, in which he reports that the petition for a writ of certiorari to the United States circuit court of appeals for the second circuit, in the case of United States *v.* R. Hoe & Co. (suit 3773), involving the classification of molders' patterns, was denied on December 17 last.

In view of the foregoing, you are hereby authorized to forward the usual certified statement for the refund of the duties exacted in this case.

Respectfully, JAMES B. REYNOLDS,
(14717.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28011.)

Drawback on carpets and rugs.

Drawback on carpets and rugs manufactured by the Bigelow Carpet Company, of Boston, Mass., with the use of imported wool and jute yarn.

TREASURY DEPARTMENT, *March 14, 1907.*

SIR: On the exportation of carpets and rugs, known as Wiltons, Brussels, and Axminsters, of various grade names, manufactured by the Bigelow Carpet Company, of Boston, Mass., with the use of imported wool and imported jute yarn, a drawback will be allowed equal in amount to the duties paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show separately the marks and numbers of the shipping packages, together with their contents.

Each roll must be marked to show the kind, lineal yards, and the width of the carpet in the roll, and all bales or packages must be marked to show separately the number and dimensions of each kind of rugs contained therein.

The drawback entry must show the name of the factory where each was manufactured, and separately the number of the lineal and square yards of each kind and description of carpet, and the number of rugs of the several kinds and dimensions, with their square yard measurements, exported, and the average quantities separately of

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the tops and noils as obtained from the imported wool, together with the quantities of imported jute yarn consumed in the manufacture thereof. Said entry must further show, in addition to the usual averments, that the merchandise was manufactured of the materials and in the manner set forth in the manufacturers' sworn statement, dated January 14, 1907.

In liquidation, the quantities of wool and jute yarn which may be taken as the bases for allowance of drawback may equal the quantities declared in the drawback entry after official verification of exported quantities.

The duty paid on the imported wool used as tops and noils in the manufacture of carpets and rugs shall be divided between the several grades or names of carpets and rugs pro rata in proportion to the value of the tops and noils used therein at the time and place of manufacture, in accordance with the principle laid down by the United States circuit court of appeals in United States *v.* Dean Linseed Oil Company (87 Fed. Rep., 453), affirmed by the United States Supreme Court (172 U. S., 647).

The manufacturer must file with the collector at the close of each six months' manufacturing period a supplemental sworn tabulated statement, for each factory, in the same form as those attached to and made a part of their sworn statement, dated January 14, 1907, in which they may change or add new names or grades of carpets and rugs.

Respectfully, JAMES B. REYNOLDS,
(39102.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28012.)

Applications for review of decisions of Board of United States General Appraisers.

Reports of applications for review of decisions of the Board of United States General Appraisers discontinued.—Circular 179 of 1891 and Circular 120 of 1895 revoked.

TREASURY DEPARTMENT, *March 16, 1907.*

SIR: You are hereby authorized to discontinue your reports of applications for review of decisions of the Board of United States General Appraisers, under Department Circular 179 of 1891 and Circular 120 of 1895, which are hereby revoked.

Respectfully, JAMES B. REYNOLDS,
(309.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28013.)

Drawback on pumps and pumping machinery.

Drawback on pumps and pumping machinery manufactured by the Jeanesville Iron Works Company, of Hazleton, Pa., with the use of imported pig iron.

TREASURY DEPARTMENT, *March 19, 1907.*

SIR: On the exportation of pumps or pumping machinery manufactured by the Jeanesville Iron Works Company, of Hazleton, Pa., with the use of imported pig iron, a drawback will be allowad equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the gross and net weight of each package separately and in the aggregate, and the number of each kind of pump contained therein.

The drawback entry must show the total number and kind of pumps exported and the net weight of the castings contained therein, together with the quantity and percentage of imported pig iron consumed in the manufacture, and, in addition to the usual averments, that the merchandise was manufactured of the materials and in the manner set forth in the manufacturer's sworn statement, dated March 7, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the amount declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported pig iron appearing in the exported castings with an allowance of 5 per cent of such weight to compensate for loss in the process of manufacture.

Respectfully, JAMES B. REYNOLDS,
(45190.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28014.)

Drawback on cast-iron water pipe.

Drawback on cast-iron water pipe manufactured by the United States Cast Iron Pipe and Foundry Company, of Burlington, N. J., with the use in part of imported pig iron.—T. D. 24227 of February 12, 1903, extended.

TREASURY DEPARTMENT, *March 19, 1907.*

SIR: The Department's regulations of February 12, 1903 (T. D. 24227), providing for the allowance of drawback on cast-iron water pipe manufactured by the Wm. Cramp & Sons Ship and Engine Building Company, of Philadelphia, Pa., in part from imported pig iron, are hereby extended, so far as applicable, to cover the exportation of similar pipe manufactured by the United States Cast Iron

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Pipe and Foundry Company, of Burlington, N. J., with the use in part of imported pig iron in accordance with their sworn statement, dated February 18, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported iron contained in the exported article with an addition of 5 per cent of such weight to compensate for the loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(44900.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28015.)

Drawback on music for piano players.

Department's regulations of October 27, 1906, establishing a rate for allowance of drawback on music in rolls for piano players, manufactured by the Chase & Baker Company, of Buffalo, N. Y., from imported paper, amended.

TREASURY DEPARTMENT, *March 19, 1907.*

SIR: The Department's regulations of October 27, 1906 (T. D. 27679), establishing a rate for the allowance of drawback on the exportation of music in rolls for piano players manufactured by the Chase & Baker Company, of Buffalo, N. Y., from imported paper, are hereby amended as follows:

In paragraph 3, after the word "selection" and before the word "exported," insert "by catalogue number and length." Cancel the fourth paragraph and substitute in lieu thereof the following:

"The manufacturers shall file at the port of exportation a sworn copy of their completed catalogue of music, and a sworn copy of each monthly bulletin issued by them with the length of each roll opposite the catalogue number stated on each."

Respectfully, JAMES B. REYNOLDS,
(39117.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 28016.)

Common carrier.

Approving bond of the Galveston, Harrisburg, and San Antonio Railway Company for the transportation of unappraised merchandise from El Paso, Tex., and discontinuing shipments under the bond of the Southern Pacific Company which was approved September 17, 1904.

TREASURY DEPARTMENT, *March 19, 1907.*

SIR: The bond of the Galveston, Harrisburg and San Antonio Railway Company, transmitted with your letter of the 14th ultimo,

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for the transportation of unappraised merchandise from El Paso, Tex., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from El Paso, Tex., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars and vessels owned or controlled by said company and running over its line of railroad and plying upon water routes and such other connecting lines of railroads and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

You will discontinue the shipment of unappraised merchandise under the bond of the Southern Pacific Company, which was approved September 17, 1904, and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(40491.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *El Paso, Tex.*

(T. D. 28017.)

Common carrier.

Approving bond of the Galveston, Harrisburg and San Antonio Railway Company for the transportation of unappraised merchandise from Eagle Pass, Tex., and discontinuing shipments under the bond of the Southern Pacific Company which was approved September 17, 1904.

TREASURY DEPARTMENT, *March 19, 1907.*

SIR: The bond of the Galveston, Harrisburg and San Antonio Railway Company, transmitted with your letter of the 12th ultimo, for the transportation of unappraised merchandise from Eagle Pass, Tex., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Eagle Pass, Tex., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars and vessels owned or controlled by said company and running over its line of railroad and plying upon water routes and such other connecting lines of railroads and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

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You will discontinue the shipment of unappraised merchandise under the bond of the Southern Pacific Company, which was approved September 17, 1904, and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(40491.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Eagle Pass, Tex.*

(T. D. 28018—G. A. 6560.)

Chlorophyll not a color.

Chlorophyll, a green coloring matter produced from fresh vegetation and used for staining food stuffs and essential oils, *Held* not a color within the meaning of the language of pargraph 58, tariff act of 1897, but subject to duty at the rate of 20 per cent ad valorem as a nonenumerated manufactured article under the provisions of section 6 of said act.—G. A. 6272 (T. D. 27054) cited.

United States General Appraisers, New York, March 13, 1907.

In the matter of protests 220234, etc., of Magnus & Lauer against the assessment of duty by the collector of customs of the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of these protests is invoiced as "chlorophyll soluble in fat, soft," and "chlorophyll liquid soluble in alcohol and water." It was returned by the appraiser as a color, and duty was accordingly assessed at the rate of 30 per cent ad valorem under the provisions of paragraph 58 of the tariff act of 1897. Various claims are made in the protests for rates of duty other than assessed, but counsel for importers in their brief announce that they rely on the claim made for duty at the rate of 20 per cent ad valorem under the provisions of section 6 of said act.

Sadtler, in his handbook on "Industrial organic chemistry," at page 440, has this to say of chlorophyll:

This is a green coloring matter of fresh vegetation, and is abundantly present in nature, but it has not been found possible heretofore to isolate it in a pure state adapted for use. It is stated that chlorophyll forms a beautiful green color, with zinc as mordant, which is adapted for dyeing, but it has not as yet been used in practice.

The official examiner in the appraisers' department who passed the merchandise, in his examination assents to this statement, and being further examined testified as follows:

Q. Do you agree, as stated here, that it has never been used as a dye?—A. No; I do not think it can be used as a dye because the tinctorial properties are not strong enough.

Q. Do you mean by that that it can not fix a color?—A. Well, yes; I do not think it can be used practically for dyeing purposes.

* * * * * * *

Q. Are you familiar with Persian berry extract which was the subject of G. A. 6272?—A Yes.

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Q. How does this article, so far as its color-giving power is concerned, compare with the Persian berry extract which was the subject of that G. A.?—A. Well, it is used for the same purposes—can be used for the same purposes.

* * * * * * *

The Board found in said G. A. 6272 (T. D. 27054) that Persian berry extract was exclusively used for the purpose of staining food stuffs and held it to be a nonenumerated manufactured article, subject to duty as such under the provisions of section 6, and in this case it is established to our satisfaction that the merchandise involved is adapted only to similar uses except that that represented by Exhibit 2 may also be used for coloring essential oil. We do not think that the merchandise represented by either Exhibit 1 or 2 is a color within the meaning of the language of paragraph 58 under which duty was assessed, and there being no special provision therefor in the existing tariff act, nor one under which even under the application of the similitude clause it may be said that it is provided for, it follows that duty must be assessed on the merchandise as claimed under the provisions of section 6 for unenumerated manufactured articles. To that extent the protests are sustained and in all other respects they are overruled. The decision of the collector is modified accordingly.

(T. D. 28019—G. A. 6561.)

Metal button molds.

PARAGRAPH 414, ACT OF 1897—BUTTON MOLDS—PARTS OF BUTTONS.

Certain pairs of metal disks commercially known as button shanks, which are parts of buttons and also button molds, *Held* to be dutiable as button molds under paragraph 414 of the present tariff act of 1897, at three-fourths of 1 cent per line per gross, and in addition thereto 15 per cent ad valorem, and not at 15 per cent ad valorem only, nor at 50 per cent ad valorem under said paragraph. Nor are such articles dutiable at 45 per cent ad valorem under paragraph 193 of said act.—Hormann *v.* United States (C. C. A.; T. D. 27922) followed, affirming Hormann's case, G. A. 6142 (T. D. 26687).

United States General Appraisers, New York, March 14, 1907.

In the matter of protest 160251 of Hormann, Schutte & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The merchandise covered by these protests, which are submitted on the record, are conceded to be precisely of the same character as the articles passed on by the circuit court of appeals in the case of Hormann *v.* United States and United States *v.* Hormann, reported by the Treasury Department in T. D. 27922. The goods are thus described by Townsend, *J.*, in said decision:

The articles in question consist of pairs of metal disks so constructed that, when a piece of cloth is placed on top of one of the disks and the two are subjected to pressure,

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a cloth-covered button is produced. These pairs of disks are commercially known as button shanks. They are concededly "parts of buttons and button molds." The appraiser returned them as metal button molds or parts of metal buttons, and the collector assessed each pair at three-fourths of 1 cent per line per gross and 15 per cent ad valorem. A line is one-fortieth of an inch, and is used as a unit of measurement from the center to the circumference of the disk.

The importers protested against said assessment, claiming that the articles were dutiable either at only 15 per cent ad valorem under said paragraph 414, as one of the "foregoing articles" not covered by the word "buttons," or at 50 per cent ad valorem under said paragraph as "buttons (or parts of buttons) not specially provided for," or at 45 per cent ad valorem under paragraph 193 of said act as "articles * * * not specially provided for * * * composed * * * of * * * metal * * * partly or wholly manufactured."

The merchandise was assessed for duty by the collector under paragraph 414 of the present tariff act of 1897 either at three-fourths of 1 per cent per line per gross, and in addition thereto 15 per cent ad valorem, as buttons of metal, or else at 50 per cent ad valorem under said paragraph as buttons not specially provided for in said act. Said paragraph, so far as pertinent, reads as follows:

414. Buttons or parts of buttons and button molds or blanks, finished or unfinished, shall pay duty at the following rates, the line button measure being one-fortieth of one inch, namely, * * * buttons of * * * metal, not specially provided for in this Act, three-fourths of one cent per line per gross, and in addition thereto * * * fifteen per centum ad valorem; * * * buttons not specially provided for in this Act * * * fifty per centum ad valorem.

It was held accordingly by the circuit court of appeals that the articles under consideration were "not only parts of buttons but something more, namely, button molds," and it was observed as follows:

By this construction the pertinent portion of the paragraph may be applied as though it read "buttons (or parts of buttons and button molds) of * * * metal;" and thus the intention of Congress is effectuated, while only one assessment of duty is laid on each pair of disks constituting a button mold.

The effect of this decision was to affirm the view taken by this Board in the case of Hormann, Schutte & Co., G. A. 6142 (T. D. 26687), and to reverse a contrary decision made by the circuit court in said case reported in 144 Federal Reporter, 707 (T. D. 26975). A like ruling was also made by the Board in Hormann's case, G. A. 5588 (T. D. 25020).

We accordingly find that the articles under consideration are button molds made of metal; and, following the decision of the circuit court of appeals and the decisions of this Board, as above cited, we hold that they are dutiable under said paragraph 414 of the present tariff act of 1897, according to line measure, and not as manufactures of metal under paragraph 193, nor under said paragraph 414 at 50 per cent ad valorem, as buttons not specially provided for. In all cases where this duty has been assessed by the collector, the protests are overruled and the decision of the collector affirmed. In all cases

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where the collector has erroneously assessed the goods at 50 per cent ad valorem under said paragraph 414, as buttons not specially provided for, the claims made by the importers, not being justified by said decisions, are all overruled and the decision of the collector allowed to stand.

(T. D. 28020.)

Abstracts of decisions of the Board of General Appraisers.

No. 14702.—Pictorial Post Cards.—Protest 226610 of Henry Bischoff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinion by Fischer, G. A.

The protest was sustained as to a portion of the goods, on the authority of G. A. 6369 (T. D. 27359), relating to pictorial post cards.

No. 14703.—Protest—Sufficiency—Particulars in Entry.—Protests 210337, etc., of American News Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907.

The protest related to pictorial post cards, which the appraiser reported should have been classified as lithographic prints under paragraph 400, tariff act of 1897, at 5 cents a pound.

Fischer, *General Appraiser:* * * * The collector, however, declines to reliquidate on the basis of these reports, giving as his reason that the protests are defective in that, though they claim under paragraph 400, they do not mention the particular rate of duty applicable to the goods.

The protests are identical in terms with those which were held to be insufficient in G. A. 6549 (T. D. 27948), and the collector's contention that they are defective is undoubtedly sound. There is, however, one circumstance present in the cases before us which differentiates them from those which were the subject of G. A. 6549 (*supra*), and which leads us to the conclusion that these protests should be sustained; and that circumstance is that in the cases at bar there is in the entry a description of the goods as "lithographed prints" with a detailed statement of their cutting size and dimensions, that brings them within the class provided for in paragraph 400 at 5 cents per pound. As the protests would, beyond cavil, be sufficient if these particulars were mentioned therein, we are of opinion that their presence in the entry or the invoice is sufficient notice to the collector, taken in connection with the protest, of the exact nature of the importer's claim. In other words, the collector has, in the official record before him when the protest is filed, all the necessary data on which to base a reliquidation if, as in the case at bar, it appears that his original classification of the goods has been incorrect.

In protests 226885-6, while the dimensions of the prints are not given in the entry, they are described as "lithographic prints, 5 cents a pound," and this is also, we think, a sufficient intimation of the character of the goods for tariff purposes.

No. 14704.—Fishhooks.—Protests 227266, etc., of Wm. Mills & Son and protest 230108 of H. A. Whittemore & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinions by De Vries, G. A.

G. A. 6494 (T. D. 27764) followed, relating to fishhooks.

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No. 14705.—ANATOMICAL CHARTS.—Protest 226914 of American Thermo Ware Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of Abstract 13758 (T. D. 27765), relating to anatomical charts.

No. 14706.—CROSSES—PICTURES—CHIEF VALUE.—Protest 224877-23303 of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinion by Fischer, G. A.

As claimed by the importers, a portion of the goods, consisting of crosses, was held dutiable as manufactures in chief value of wood under paragraph 208, tariff act of 1897, and other goods, consisting of pictures, were held dutiable as manufactures of paper under paragraph 407. Note G. A. 6455 (T. D. 26747).

No. 14707.—PAPER PANELS.—Protests 227397-23822 of Downing, Judae & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2 (Fischer, Howell, and De Vries, General appraisers; De Vries, G. A., absent), March 13, 1907. Opinion by Fischer, G. A.

Paper panels colored by spraying were held to have been properly classified as manufactures of paper under paragraph 407, tariff act of 1897. G. A. 5987 (T. D. 26212) followed.

No. 14708.—FARRIERS' KNIVES.—Protest 229973 of Dame, Stoddard & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907.

The protest related to farriers' or blacksmiths' knives, classified under paragraph 155, tariff act of 1897, relating to knives of various kinds, and claimed by the importers to be dutiable under paragraph 193 as manufactures of steel. Protest sustained.

FISCHER, *General Appraiser:* * * * We are of opinion that the contention of the importers is correct. Paragraph 155 provides for only particular kinds or varieties of knives which are specifically mentioned therein by name, but farriers' knives are none of these, and hence they are not covered by that paragraph. T. D. 5011, on which the collector relies in support of his classification, simply held that farriers' knives were dutiable under the provision in the act of July 14, 1862, then in force for "cutlery of all kinds." So they would be now if there were such a provision in the present law, but there is not. Consequently, not being denominatively provided for in the act, they are dutiable according to the component material of chief value therein, which is concededly metal.

No. 14709.—WORK OF ART—BAPTISMAL FONT.—Protest 211614½ of Kronfeld, Saunders & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 13, 1907. Opinion by Waite, G. A.

A baptismal font was held free of duty as a work of art under paragraph 703, tariff act of 1897, as claimed by the importers. Note United States *v.* Ecclesiastical Art Works (142 Fed. Rep, 1038; T. D. 26945).

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No. 14710. — WORK OF ART — BAPTISMAL FONT. — Protest 210642 of Kronfeld, Saunders & Co. Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Same as No. 14709 (*supra*).

No. 14711.—WEIGHT OF GHEE.—Protest 215687 of Gabriel Debany against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 13, 1907. Opinion by Waite, G. A.

It appeared that the weight of ghee as determined by the weigher was excessive by reason of an insufficient allowance for tare. The Board held that duty should be assessed on the basis of the weight of 2,352 pounds. Protest sustained.

No. 14712.—BAR-LE-DUC JELLY.—Protest 218362 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 13, 1907. Opinion by Waite, G. A.

Protest sustained on the authority of G. A. 5167 (T. D. 23848), relating to bar-le-duc jelly.

No. 14713.—AGATE BUTTONS.—Protests 221702–22995, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 13, 1907. Opinion by Somerville, G. A.

The goods were held to have been properly classified as agate buttons under paragraph 414, tariff act of 1897.

No. 14714.—AGATE BUTTONS.—Protest 217733 of Sucessores de Suau against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 14713 (*supra*).

No. 14715.—PETROLEUM PRODUCTS.—Protests 229326, etc., of F. A. Marsily & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 13, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of G. A. 6405 (T. D. 27507), relating to petroleum products.

No. 14716.—PROTESTS ABANDONED.—Protests 225181, etc., of Imperial Braid Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

No. 14717.—PROTEST ABANDONED.—Protest 225600 of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Howell, G. A.

Same as No. 14716 (*supra*).

No. 14718.—PROTEST ABANDONED.—Protest 226262 of Simpson Crawford Company. Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Same as No. 14716 (*supra*).

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No. 14719.—PROTESTS UNSUPPORTED.—Protests 226181, etc., of Bamberger-Stern Company *et al.*, protest 225170 of Friedman & Johnstone, protest 220207 of Imperial Braid Company, protests 225197, etc., of Lichtenstein Millinery Company *et al.*, protest 223891 of W. The Losen, protest 227724 of A. D. Matthews' Sons, protests 94043*f*, etc., of Mills & Gibb *et al.*, protests 68912*f*, etc., of Samuel Schiff & Co. *et al.*, protests 18781*h*, etc., of Marcel Schmitt *et al.*, protests 51568*f*, etc., of Simpson, Crawford & Simpson *et al.*, protests 222387, etc., of A. & H. Veith *et al.*, protests 225741 and 230104 of R. Vogelsang, and protests 225749, etc., of P. K. Wilson & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 13, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 14720.—PROTESTS UNSUPPORTED.—Protests 219343, etc., of Wisner Brothers. Opinion by Fischer, G. A.

Same as No. 14719 (*supra*).

No. 14721.—PROTESTS UNSUPPORTED.—Protests 228204, etc., of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of Boston. Opinion by Fischer, G. A.

Same as No. 14719 (*supra*).

No. 14722.—PROTESTS UNSUPPORTED.—Protests 225932, etc., of E. de Grandmont *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 13, 1907. Opinion by Hay, G. A.

Protests overruled for want of merit.

No. 14723.—PROTEST UNSUPPORTED.—Protest 226565 of C. H. Ritter & Co. against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 14722 (*supra*).

No. 14724.—PROTEST UNSUPPORTED.—Protest 226709 of Hawley & Letzerich against the assessment of duty by the collector of customs at the port of Galveston.

Same as No. 14722 (*supra*).

No. 14725.—PROTEST UNSUPPORTED.—Protest 225757 of X. O. Merder against the assessment of duty by the surveyor of customs at the port of Pittsburg.

Same as No. 14722 (*supra*).

No. 14726.—PROTESTS UNSUPPORTED.—Protests 24246*h*, etc., of James P. Smith & Co. *et al.* Opinion by Somerville, G. A.

Same as No. 14722 (*supra*).

No. 14727.—PROTESTS UNSUPPORTED.—Protests 126992, etc., of F. B. Vandegrift & Co. *et al.* and protests 119613, etc., of J. Vetterlein & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Opinions by Somerville, G. A.

Same as No. 14722 (*supra*).

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No. 14728.—PROTESTS UNSUPPORTED.—Protest 195066 of Austin, Baldwin & Co. and protests 222342, etc., of Hing Lum Chan *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers; Hay, G. A., absent), March 13, 1907. Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 14729.—PROTESTS UNSUPPORTED.—Protests 186754, etc., of M. Terao *et al.* against the assessment of duty by the collector of customs at the port of Port Townsend.

Same as No. 14728 (*supra*).

No. 14730.—SEA MOSS.—Protests 194849, etc., of H. Bayersdorfer & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), March 14, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6464 (T. D. 27670), relating to sea moss.

No. 14731.—STEEL TIES—INGOTS.—Protest 224597 of Joseph Blank against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 14, 1907.

The importers objected to the classification of the merchandise as structural steel shapes under paragraph 125, tariff act of 1897, asserting that it should have been classified as steel ingots under paragraph 135.

FISCHER, *General Appraiser:* The merchandise consists of steel pieces about 28 or 30 feet long with a cross section somewhat resembling the curved portion of the letter "B." * * * The testimony offered by the importers is meager, but what there is is to the effect that the pieces as imported are cut into short lengths and used as ties on a narrow-gauge railway. It is manifest that the goods are not ingots. They may have been once, but as imported they are several steps removed from the condition of ingots. As this is the only claim in the protest, the same is overruled and the decision of the collector will stand.

No. 14732.—BELTINGS.—Protest 223649 of Baum, Linz & Cohen against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 14, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6498 (T. D. 27780), relating to beltings.

No. 14733.—ORNAMENTS.—Protests 43686*f*, etc., of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 14, 1907. Opinion by Fischer, G. A.

G. A. 5664 (T. D. 25254) followed, relating to ornaments.

No. 14734.—DUTIABLE WEIGHT OF TOBACCO.—Protests 187853, etc., of I. Kaffenburg & Sons *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 14, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of Falk *v.* United States (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

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No. 14735.—Dutiable Weight of Tobacco.—Protests 104888, etc., of Havana American Company *et al.* and protests 207906, etc., of Taussig & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14734 (*supra.*)

No. 14736.—Dutiable Weight of Tobacco.—Protest 202728 of Ron Fernandez Cigar Company against the assessment of duty by the collector of customs at the port of Duluth.

Same as No. 14734 (*supra*).

No. 14737.—Protests Abandoned.—Protests 46973*f*, etc., of Simpson, Crawford & Simpson *et al.* March 14, 1907. Opinion by Howell, G. A.

Same as No. 14716 (*supra*).

No. 14738.—Protest Abandoned.—Protest 179372 of F. Pustet & Co. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 14, 1907. Opinion by Waite, G. A.

Same as No. 14716 (*supra*).

No. 14739.—Protests Unsupported.—Protests 226678, etc., of J. & H. Rosenberg. March 14, 1907. Opinion by Fischer, G. A.

Same as No. 14719 (*supra*).

No. 14740.—Protest Unsupported.—Protest 229698 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; Lunt, G. A., absent), March 14, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14741.—Bar-le-Duc Jelly.—Protest 223129 of La Manna, Azema & Farnan. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907.

Same as No. 14712 (*supra*).

No. 14742.—Wooden Statuary—Work of Art.—Protest 212349 of Mother M. John against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907. Opinion by Waite, G. A.

A wooden statue was held free of duty under paragraph 703, tariff act of 1897, as a work of art, as claimed by the importer.

No. 14743.—Deer and Moose Carcasses—Beef—Merchandise of No Value—Similitude.—Protest 226723 of Spencer O. Fischer against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907.

The protest related to deer and moose carcasses classified as beef by similitude under paragraph 274, tariff act of 1897. The importer contended that they should have been classified as unenumerated articles under section 6, or that they were exempt from duty because having no commercial value, on the authority of article 561, Customs Regulations of 1899. Protest overruled.

Waite, *General Appraiser:* * * * In the Board's decision, Abstract 7902 (T. D. 26682), venison was held to be dutiable at the rate of 2 cents per pound under said paragraph 274 upon the ground of its similarity in material and use to beef; and the same rule would, in our judgment, apply to the flesh of the moose. We accordingly hold the assessment by the collector to be correct.

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As to the argument that the goods are free because possessing no commercial value, it may be said that there is no express exemption in the tariff of articles without commercial value; and while, as to such an article, there would be no base for the computation of an ad valorem duty, the existence or nonexistence of commercial value becomes immaterial where goods are dutiable at a purely specific rate, as in the case before us. This view accords with the principle of numerous Board decisions. *In re* Voss & Stern, G. A. 1915 (T. D. 13677); *In re* Smith, G. A. 4467 (T. D. 21327). There is indication in the entry that the goods were found to have a value by the local appraiser. However, that is of no importance.

No. 14744.—Canned Pineapples.—Protests 225287, etc., of Ed. Maurer against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907. Opinion by Somerville, G. A.

Canned pineapples, classified as fruit preserved in sugar under paragraph 263, tariff act of 1897, were claimed to be dutiable under the provision in the same paragraph for pineapples preserved in their own juice. The Board found sugar had been intrinsically added, and, on the authority of Dudley *v.* United States (148 Fed. Rep., 333; T. D. 27516), overruled the protests.

No. 14745.—Linen-Thread Waste.—Protests 228315, etc., of Gatti McQuade Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907. Opinion by Somerville, G. A.

Linen-thread waste was held free of duty as paper stock under paragraph 632, tariff act of 1897. Note G. A. 5719 (T. D. 25422) and Abstract 4817 (T. D. 26072).

No. 14746.—Waste Bagging.—Protest 228516 of William H. Masson against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 4406 (T. D. 20960), relating to waste bagging.

No. 14747.—Protests Unsupported.—Protest 220484 of Gabriel Debany and protest 212645 of Marone & Lofaro against the assessment of duty by the collector of customs at the port of New York. Before Board 3 (Waite, Somerville, and Hay, General Appraisers), March 15, 1907. Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 14748.—Protest Unsupported.—Protest 204619 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14747 (*supra*).

No. 14749.—Protest Unsupported.—Protest 223860 of American Express Company. Opinion by Hay, G. A.

Same as No. 14747 (*supra*).

No. 14750.—Protest Unsupported.—Protest 221037 of William H. Masson against the assessment of duty by the collector of customs at the port of Baltimore. Opinion by Hay, G. A.

Same as No. 14747 (*supra*).

No. 14751.—Protest Unsupported.—Protest 227514 of C. R. Osborn. Opinion by Somerville, G. A

Same as No. 14747 (*supra*).

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No. 14752.—Hat Pins.—Protests 143525, etc., of George C. Poirier and protest 229691 of Samuel Schiff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), March 18, 1907. Opinions by Sharretts, G. A.

The importers' contentions were sustained as to portions of the goods, consisting of hat pins, which were held dutiable as manufactures of the component material of chief value. Note G. A. 6139 (T. D. 26679) and G. A. 6376 (T. D. 27390).

No. 14753.—Precious Coral—Rock Crystal Intaglios.—Protests 1522*h*, etc., of William H. Stiner & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), March 18, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6285 (T. D. 27108) and G. A. 6482 (T. D. 27726), relating to precious coral and rock crystal intaglios.

No. 14754.—Imitation Pearls—Imitation Coral—Precious Coral.—Protests 96110*f*, etc., of W. H. Stiner & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), March 18, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6088 (T. D. 26554), G. A. 6236 (T. D. 26992), and G. A. 6482 (T. D. 27726), relating to imitation pearls and imitation and precious coral.

No. 14755.—Celluloid Toilets.—Protest 223718 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), March 18, 1907. Opinion by Sharretts, G. A.

The protest related to so-called toilets consisting of small mirrors incased in a celluloid frame at the back of which is a socket containing a comb made of celluloid, the whole having a leather cover. The Board held these goods to have been properly classified as composed in chief value of celluloid.

No. 14756.—Factis Truss Pads.—Protest 226977 of D. S. Hesse & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent), March 18, 1907. Opinion by Sharretts, G. A.

Truss pads, composed in chief value of factis, were held dutiable as unenumerated manufactured articles under section 6, tariff act of 1897, as claimed by the importers. G. A. 6375 (T. D. 27383) followed.

No. 14757.—Bristol Board—Sufficiency of Protest.—Protest 211750 of Favor, Ruhl & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 18, 1907. Opinion by Fischer, G. A.

The protest related to bristol board, which was held dutiable as drawing paper under paragraph 401, tariff act of 1897, as claimed by the importers, in accordance with G. A. 6160 (T. D. 26734). The collector's objection to the protest, that it was insufficient because it failed to mention the particular rate applicable under said paragraph, was overruled by the Board on the ground that the invoice description of the goods and the rates at which they were entered showed the particular subdivisions of said paragraph which were applicable.

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No. 14758.—Silk Fabrics.—Protest 52557*f* of Simpson, Crawford & Simpson against the assessment of duty by the collector of customs at the port of New York. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent), March 18, 1907. Opinion by Howell, G. A.

A portion of the goods was held dutiable as silk fabrics under paragraph 387, tariff act of 1897, as claimed by the importers. G. A. 4435 (T. D. 21115) followed.

No. 14759.—Dutiable Weight of Tobacco.—Protests 143897, etc., of J. Vetterlein & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. March 18, 1907.

Same as No. 14734 (*supra*).

No. 14760.—Protest Unsupported.—Protest 178595 of A. Hilbert against the assessment of duty by the collector of customs at the port of New York. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers), March 18, 1907. Opinion by Sharretts, G. A.

Protest overruled for want of merit.

No. 14761.—Protest Unsupported.—Protest 225191 of P. W. Lambert & Co. Opinion by McClelland, G. A.

Same as No. 14760 (*supra*).

No. 14762.—Protests Unsupported.—Protest 212593 of A. Hilbert and protest 229703 of Strauss Brothers & Co. Before Board 1 (Lunt, Sharretts, and McClelland, General Appraisers; McClelland, G. A., absent).

Same as No. 14760 (*supra*).

No. 14763.—Protest Unsupported.—Protest 214049 of Simpson, Crawford & Co. Before Board 2 (Fischer, Howell, and De Vries, General Appraisers; De Vries, G. A., absent). Opinion by Howell, G. A.

Same as No. 14760 (*supra*).

(T. D. 28021.)

Common carrier.

Approving bond of the Galveston, Harrisburg and San Antonio Railway Company for the transportation of unappraised merchandise from Galveston, Tex., and discontinuing shipments under the bond of the Southern Pacific Company, which was approved September 17, 1904.

Treasury Department, *March 19, 1907.*

Sir: The bond of the Galveston, Harrisburg and San Antonio Railway Company, transmitted with your letter of the 14th ultimo, for the transportation of unappraised merchandise from Galveston, Tex., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Galveston, Tex., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars and vessels owned or controlled by said company and running over its line of railroad and plying upon water routes, and such

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other connecting lines of railroads and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

You will discontinue the shipment of unappraised merchandise under the bond of the Southern Pacific Company, which was approved September 17, 1904, and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(40491.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 28022.)

Common carrier.

Approving bond of Missouri, Kansas and Texas Railway Company for transportation of unappraised merchandise from Galveston, Tex., and discontinuing shipments under bond which was approved April 11, 1898.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The bond of the Missouri, Kansas and Texas Railway Company, transmitted by the surveyor at St. Louis, Mo., under date of the 12th instant, in the matter of rebonding said company for the transportation of unappraised merchandise from Galveston, Tex., under the act of June 10, 1880, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The privilege of the transportation of unappraised merchandise authorized under the bond of the carrier named, which was approved April 11, 1898, is continued under the bond herein approved.

You will discontinue the shipment of unappraised merchandise under the old bond and note the rebonding thereon, and hold said bond without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,
(18509.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 28023.)

Common carrier.

Approving bond of Pennsylvania Railroad Company for transportation of unappraised merchandise from Buffalo, N. Y.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The bond of the Pennsylvania Railroad Company, transmitted with your letter of the 18th instant, for the transportation of unappraised merchandise from Buffalo, N. Y., under the act of June 10, 1880, is hereby approved, and one copy of the bond is transmitted herein for your files.

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Under this bond, the carrier named is authorized to transport unappraised merchandise from Buffalo, N. Y., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported in suitable cars or vessels owned or controlled by it and by either of the following-named freight lines: Anchor Line, Atlantic Coast Despatch, Empire Line, Eastern Carolina Despatch, Great Southern Despatch, Merchants and Miners Transportation Company, Richmond and Danville Despatch, Seaboard Despatch, and Union Line, and running on its lines of railroads and such connecting lines of railroads and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(18554.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Buffalo, N. Y.*

(T. D. 28024.)

Wafers and biscuits.

Decision of the United States circuit court of appeals, second circuit, in United States *v.* Thomas Meadows & Co. (T. D. 28004), involving the dutiable classification of arctic wafers, Philippine biscuits, etc., acquiesced in.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of the United States *v.* Thomas Meadows & Co. (suit 3728) was recently decided by the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in suit consisted of arctic wafers, Philippine biscuits, etc., upon which duty was assessed at the rate of 50 per cent ad valorem as confectionery under paragraph 212 of the tariff act of July 24, 1897. The importers protested, claiming the merchandise to be dutiable as a nonenumerated manufactured article under section 6 of the said act, which claim was sustained by the United States circuit court of appeals without opinion.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward the usual certified statement for the refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(15533.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28025.)

Pongee silk—"Shantungs."

Decision of the United States circuit court of appeals, second circuit, H. Mendelson & Co. *v.* United States, suit 3359 (T. D. 27898), acquiesced in.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that suit 3359, H. Mendelson & Co. *v.* United States, was recently decided by the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in question consisted of pongee silk in the piece imported from China and generally known as "shantungs," which was assessed with duty by the collector of customs as silk "boiled off," under paragraph 387 of the tariff act at the rate of $3 per pound, and was claimed by the importers to be dutiable under the same paragraph at the rate of $2.50 per pound, as composed wholly of silk "in the gum."

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(34843.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28026.)

Books with lithographic covers.

Decision of the United States circuit court for the southern district of New York in suit of E. P. Dutton & Co. *v.* United States (T. D. 27983), acquiesced in.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that suit 4358 of E. P. Dutton & Co. *v.* United States was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit was returned by the appraiser as books for children's use, containing illuminated lithographic prints. Duty was assessed thereon at the rate of 8 cents per pound under paragraph 400 of the tariff act of July 24, 1897. The importers protested, claiming that the books did not contain lithographic prints, the only lithographic print being that present on the front cover, and were properly dutiable at the rate of 25 per cent ad valorem under paragraph 403, which claim was sustained by the United States circuit court in this case, without opinion.

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The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(45200.) *Acting Secretary*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28027.)

Fur waste.

Decision of the United States circuit court for the southern district of New York in United States *v.* Hatters' Fur Exchange (T. D. 27971), acquiesced in.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of United States *v.* Hatters' Fur Exchange (suit 4266), was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of combings from rabbit or hare skins. Duties were assessed thereon at the rate of 20 per cent ad valorem under paragraph 426 of the act of July 24, 1897, as furs not on the skin, prepared for hatters' use. The importers protested, claiming the merchandise to be waste and properly dutiable at the rate of 10 per cent ad valorem under paragraph 463 of the act of July 24, 1897, which claim was sustained by the United States circuit court in this case, the evidence showing that the merchandise was not commercially known as furs prepared for hatters' use.

The Attorney-General advises the Department that no further proceedings will be directed in the case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(45201.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28028.)

Drawback on automobiles.

Drawback on automobiles manufactured by the Pope Motor Car Company, of Toledo, Ohio, with the use of imported ball bearings and imported magnetos with coil and switch attached.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: On the exportation of automobiles manufactured by the Pope Motor Car Company, of Toledo, Ohio, with the use of imported ball

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bearings and imported magnetos with the square coil and switch attached, a drawback will be allowed equal to the amount of the duties paid on the imported material so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of each shipping package and the contents of each, separately and in the aggregate.

The drawback entry must show the total number of automobiles exported, the number of ball bearings of each size and number contained therein, and the number of imported Eisemann-Lavalette 4 cylinder high tension magnetos, with coils and switches attached and contained therein, describing the said imported parts as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 12, 1907, transmitted herewith for filing in your office.

In liquidation, the quantities of imported ball bearings and magnetos with coils and switches attached, which may be taken as the bases for the allowance of drawback, may equal the quantities declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the quantities shown in the manufacturers' sworn statement for each automobile.

Respectfully, JAMES B. REYNOLDS,
(38523.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28029.)

Drawback on farming machinery and implements.

Drawback on farming machinery and implements manufactured by the Johnston Harvester Company, of Batavia, N. Y., with the use in part of imported pig iron and steel billets.

TREASURY DEPARTMENT, *March 22, 1907.*

SIR: On the exportation of farming machinery and implements manufactured by the Johnston Harvester Company, of Batavia, N. Y., with the use in part of imported pig iron and imported steel billets, a drawback will be allowed equal in amount to the duties paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the contents of each package separately and in the aggregate, and the gross and net weights of each.

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The drawback entry must show the total number of machines or implements of each kind exported and the net weight and percentage of the imported pig iron contained therein, together with the net weight of the imported steel contained therein, and the quantities of each consumed in the manufacture, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 9, 1907, transmitted herewith for filing in your office.

In liquidation, the quantities of imported pig iron and steel billets which may be taken as the bases for the allowance of drawback may equal the quantities declared in the drawback entry after official verification of the exported quantities, provided it shall not exceed the weights shown in said sworn statement, and to the net weight of the imported iron contained in the exported articles an addition of 5 per cent thereof may be made for loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(45219.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28030.)

Express charges—Samples.

Express charges upon samples forwarded to and returned by the Board of United States General Appraisers to be paid by collectors of customs.

TREASURY DEPARTMENT, *March 23, 1907.*

SIR: The Department duly received your letter of the 13th instant, relative to the payment of express charges upon samples returned to you by the Board of United States General Appraisers.

As the charges upon samples forwarded to the Board of General Appraisers are prepaid by the collectors of customs, the Department is of the opinion that to avoid confusion such charges upon the return of the samples should also be paid by the collector.

Respectfully, JAMES B. REYNOLDS,
(10183.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 28031—G. A. 6562.)

Old jute bagging—Sufficiency of evidence.

1 PRODUCTION OF SAMPLES.

The character of imported merchandise may be shown by witnesses familiar with the goods, testifying from the invoice description and their personal examination without the production of actual samples of the importations.—United States *v.* Herrmann *et al.* (C. C. A.; T. D. 27981).

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2. RAGS—OLD JUTE BAGGING—WASTE.

Held that coarse pieces of old jute bagging, removed from cotton bales, which are torn, ragged, and dirty, and are not of such a character as to be capable of use for patching purposes or otherwise than as paper stock, are not dutiable as "waste" under paragraph 463, tariff act of 1897, but free of duty under paragraph 648, as "rags."—Train-Smith Company *v.* United States (140 Fed. Rep., 113; T. D. 26484) followed.

United States General Appraisers, New York, March 22, 1907.

In the matter of protests 202314, etc., of Salomon Brothers & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The goods covered by these protests consist of fragments of old gunny bagging, which were assessed for duty by the collector under paragraph 463 of the present tariff act of 1897, as waste not specially provided for. They are claimed to be free either under paragraph 632 of said act, as waste bagging fit only to be converted into paper, or else under paragraph 648, as rags not otherwise specially provided for in this act.

The importers introduced two samples which were claimed to represent the goods under consideration, although not parts of any one of the importations. They are marked as bales 5805 and 6119. These samples were admitted in evidence as illustrative exhibits, and were marked accordingly.

It has been held by the United States circuit court of appeals (second circuit) that the character of merchandise may be proved by witnesses familiar with the goods without the production of actual samples of the importation. United States *v.* Herrmann, and other cases, reported by the Treasury Department in T. D. 27981. This decision lays down a principle which has been uniformly followed by this Board since its organization. Samples of goods may properly be regarded as a shorthand, abbreviated description of the merchandise which may be observed by inspection.

In the case of Train-Smith Company *v.* United States (140 Fed. Rep., 113; T. D. 26484) it was held that coarse pieces of old jute bagging removed from cotton bales which are torn, ragged and dirty, and are not of such a character as to be capable of use for patching purposes or otherwise than as paper stock, are not dutiable as waste under paragraph 463 of the tariff act of 1897, but are free of duty under paragraph 648, as rags. A contrary view was held by this Board in *In re* Train-Smith Company, G. A. 5265 (T. D. 24172). Additional testimony was however taken in that case after it was decided by the Board and a sample of the merchandise introduced before the referee. In our judgment the preponderance of the testimony brings the importation within the principle decided by the

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circuit court in the case above cited, the goods being shown to be substantially identical in character with the samples to which we have above alluded

The protests are all sustained and the collector's decision reversed with instructions to reliquidate the entries accordingly.

(T. D. 28032—G. A. 6563.)

Sheep dip.

A compound known as sheep dip and applied externally to sheep as a germicide, held to be dutiable at 20 per cent ad valorem under the provisions of paragraph 15, tariff act of 1897.—Shallus *v.* Stone (T. D. 27825) followed.

United States General Appraisers, New York, March 23, 1907.

In the matter of protest 228522 of Frank H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The invoice to which this protest relates describes the merchandise in question as "sheep wash." Duty was assessed on the same at the rate of 20 per cent ad valorem under the provisions of paragraph 15, tariff act of 1897. The case has been submitted for decision without evidence in support of the claim made for free entry under paragraph 657 of said act.

The special report of the appraisers which accompanies the protest states that the merchandise "is so-called sheep dip of the same general and specific character as that described in G. A. 4949 (T. D. 23139)."

In transmitting the papers in the case the collector reports that duty was assessed in accordance with the ruling of the Board in Abstract 11579 (T. D. 27393). In the latter case the Board held the merchandise under consideration was a coal-tar preparation dutiable at 20 per cent ad valorem under paragraph 15.

An appeal was taken from that decision to the United States circuit court, district of Maryland, Shallus *v.* Stone (suit 1848), and the decision of the court affirmed the Board (T. D. 27825). We quote from the opinion of Judge Morris, who wrote the decision, as follows:

It is true that a great many compounds which are used as sheep wash are debarred from free entry by the fact that they are also fit for use for other purposes and are actually so used, but it is not a fact as is urged by the counsel for the importer that the rule as established and applied by the General Appraiser prevents every sheep dip from free entry.

Following the ruling of the court (T. D. 27825), *supra*, the protest is overruled and the decision of the collector is affirmed.

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(T. D. 28033—G. A. 6564.)

Manufactures of wood—Composition croquet and roque balls.

Croquet and roque balls composed of sawdust, mixed with a binding substance, molded into a spherical form and finished by the application of an exterior coating of celluloid, wood the component material of chief value in the finished articles, are dutiable at the rate of 35 per cent ad valorem under paragraph 208, tariff act of 1897, as manufactures of wood, and not at 65 cents per pound and 25 per cent ad valorem under paragraph 17, as celluloid articles.

United States General Appraisers, New York, March 25, 1907.

In the matter of protests 218395, etc., of A. G. Spalding & Bros. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise covered by these protests is invoiced as sets of smooth or milled "excelite" croquet balls, and sets of roque balls.

The balls in question are composed of particles of boxwood finely divided—an especially prepared sawdust—mixed with some binding substance and molded under pressure into a spherical form possessing great density and hardness. A thick coating of colored celluloid is then applied to the surface of the balls which, in some cases, is left perfectly smooth and in others is milled or corrugated.

The evidence shows, and we find as a fact, that the wooden balls are of much greater value than the celluloid covering applied thereto; based upon which finding we sustain the claim in the protests that the merchandise is dutiable at 35 per cent ad valorem under paragraph 208 of the present tariff act, the collector's decision in assessing duty thereon at 65 cents per pound and 25 per cent ad valorem under paragraph 17 being reversed.

(T. D. 28034—G. A. 6565.)

Pony—Horse.

A pony is dutiable as a "horse" under paragraph 220, tariff act of 1897.

United States General Appraisers, New York, March 25, 1907.

In the matter of protest 229487 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of Boston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* It is claimed in this case that a Welsh pony is dutiable at 20 per cent ad valorem, under the provision for

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"all other live animals, not specially provided for," in paragraph 222 of the tariff act of 1897, rather than at the specific duty of $30 per head imposed on horses by paragraph 220, which reads as follows:

220. Horses and mules, valued at one hundred and fifty dollars or less per head, thirty dollars per head; if valued at over one hundred and fifty dollars, twenty-five per centum ad valorem.

The word "pony" signifies "a very small horse, especially one of small breed; specifically a horse 13 hands or less in height." (Standard Dictionary.) There can be no question that such an animal is within the letter of the provision quoted. Abstract 10499 (T. D. 27209); T. D. 11124. It is the contention of the importer that it, nevertheless, is not within the spirit of the law. He says:

The very fact that $150 is mentioned as a nominal price for a horse or mule, and $30 specific duty on that price, and 25 per cent above $150, would seem to show that it was not the intention to assess any horse or similar animal above 25 per cent. The nominal value of the ordinary pony is nowhere near $150. The pony I import here is what would be called a very high-class pony for family use, and yet his value was only about $75. When this is classified as a horse and a specific duty of $30 is assessed, it makes me pay nearer 40 per cent, which was not evidently the intention of the framers of this act.

It may be that a rate of 40 per cent ad valorem for a cheap animal is disproportionate to the rate of 25 per cent for a valuable one, but the Board is not concerned with and can not undertake to adjust a lack of symmetry in rates when the statute is so unambiguous in its purview. *In re* Claflin (52 Fed. Rep., 121, 123). In unequivocal terms it makes horses and mules valued at $150 per head "*or less*" dutiable at $30 per head. If the importer's argument were sound no horse of less value than $120 would be included, that being the minimum value at which $30 per head would not exceed the supposed maximum rate of 25 per cent. To give the statute such effect would be legislation pure and simple.

The protest is overruled and the collector's decision affirmed.

(T. D. 28035—G. A. 6566.)

Bromofluorescic acid.

Bromofluorescic acid is dutiable as a coal-tar color or dye under paragraph 15, tariff act of 1897, at 30 per cent ad valorem.

United States General Appraisers, New York, March 25, 1907.

In the matter of protest 124050 of Kuttroff, Pickhardt & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

LUNT, *General Appraiser:* The merchandise covered by this protest is invoiced as "bromofluorescic acid." The appraiser returned

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the same as a coal-tar color or dye, not derived from alizarin or anthracin, and the collector assessed duty thereon at 30 per cent ad valorem as a coal-tar color or dye under paragraph 15 of the tariff act of 1897. The importers claim said merchandise to be a coal-tar preparation not a color or dye, dutiable at 20 per cent ad valorem under paragraph 15 of said act.

In G. A. 5766 (T. D. 25523) the issue was raised and decided adversely to the Government, which the circuit court reversed upon review (147 Fed. Rep., 758; T. D. 27427). On appeal from this decision to the United States circuit court of appeals for the second circuit, the decision of the circuit court was affirmed (T. D. 28003). In accordance with this decision we find the merchandise in question to be a coal-tar color or dye, not specially provided for, and hold it dutiable under paragraph 15 at 30 per cent ad valorem.

The protest is overruled and the decision of the collector affirmed.

(T. D. 28036.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 14764.—Chemical Glassware.—Protests 16326 *h*, etc., of P. H. Petry & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 19, 1907. Opinion by Sharretts, G. A.

G. A. 6533 (T. D. 27884) and G. A. 5587 (T. D. 25019) followed, relating to chemical glassware.

No. 14765.—Beaded Leather Bags.—Protests 232167, etc., of Guthman, Solomons & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 19, 1907. Opinion by Sharretts, G. A.

On the authority of T. D. 27093 (suit 1614), the Board held beaded leather bags dutiable as manufactures in chief value of leather under paragraph 450, tariff act of 1897, as claimed by the importers.

No. 14766.—Charcoal.—Protest 234718 of A. Klipstein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 19, 1907. Opinion by McClelland, G. A.

G. A. 6440 (T. D. 27610) followed, relating to charcoal.

No. 14767.—Ribbons of Metal Thread and Silk.—Protest 196896 of Passavant & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 19, 1907. Opinion by Fischer, G. A.

The protest related to ribbons of metal thread and silk, classified as composed in chief value of the former material and claimed to be composed in chief value of the latter. Protest sustained in part.

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No. 14768.—Trimmings—Bindings.—Protests 206946, etc., of Massce & Whitney *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 19, 1907. Opinion by Fischer, G. A.

A portion of the goods, which were classified as trimmings, were claimed to be dutiable under paragraph 389, tariff act of 1897, as silk bindings, as claimed by the importers. The assessment was affirmed as to another portion of the merchandise, which was described by the importer in his testimony as a webbing, but which he admitted was used exclusively as a trimming, and which other evidence in the case showed to be a trimming.

No. 14769.—Statuary—Marble Columns.—Protest 199052 of R. D. Berrey against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, March 19, 1907. Opinion by Waite, G. A.

Marble columns, evidently for a monument and intended to support a half-bust figure, were held not to be statuary as defined in paragraph 454, tariff act of 1897.

No. 14770.—Loucoum—Confectionery.—Protest 215238–22459 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, March 19, 1907. Opinion by Waite, G. A.

So-called loucoum, having about the same appearance, consistency, and taste as an ordinary gum drop, was held to have been properly classified as confectionery under paragraph 212, tariff act of 1897.

No. 14771.—Dutiable Weight of Tobacco.—Protest 229057 of Kaiser & Boasberg against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 3, March 19, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14772.—Dutiable Weight of Tobacco.—Protests 198010, etc., of A. R. Kloeb Company *et al.* against the assessment of duty by the surveyor of customs at the port of Dayton.

Same as No. 14771 (*supra*).

No. 14773.—Dutiable Weight of Tobacco.—Protests 229068, etc., of Ron, Fernandez Cigar Company against the assessment of duty by the collector of customs at the port of Duluth.

Same as No. 14771 (*supra*).

No. 14774.—Dutiable Weight of Tobacco.—Protest 214185 of Lewis Osterweis & Sons against the assessment of duty by the collector of customs at the port of New Haven.

Same as No. 14771 (*supra*).

No. 14775.—Dutiable Weight of Tobacco.—Protests 123686, etc., of Havana-American Company *et al.* against the assessment of duty by the collector of customs at the port of New Orleans.

Same as No. 14771 (*supra*).

No. 14776.—Dutiable Weight of Tobacco.—Protests 125903, etc., of Juan F. Portuondo Cigar Manufacturing Company *et al.* and protests 148952, etc., of Frau & Pena *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14771 (*supra*).

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No. 14777.—Dutiable Weight of Tobacco.—Protests 61517*b*, etc., of F. W. Myers & Co. *et al.* against the assessment of duty by the collector of customs at the port of Plattsburg.

Same as No. 14771 (*supra*).

No. 14778.—Dutiable Weight of Tobacco.—Protest 60495*b* of American Cigar Company against the assessment of duty by the collector of customs at the port of Richmond.

Same as No. 14771 (*supra*).

No. 14779.—Dutiable Weight of Tobacco.—Protests 153888, etc., of Charles H. Wyman & Co. *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14771 (*supra*).

No. 14780.—Dutiable Weight of Tobacco.—Protests 199272 of M. Blaskower Company *et al.* against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 14771 (*supra*).

No. 14781.—Regalia—Tray—Cross.—Protest 222389 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 19, 1907.

The merchandise was claimed to be entitled to entry free of duty as church regalia under paragraph 649, tariff act of 1897.

Hay, *General Appraiser:* The articles here in question are described on the invoice as (1) a "verschtasse," which the appraiser reports is a circular nickeled silver tray on which are fastened several small receptacles for salt or wafers used during religious services, and (2) an "altarkreuz," a cross of similar material. * * *

At the hearing the witness testified that the "altarkreuz" is carried in the hand of the priest during services in the Greek Catholic church. This would seem to bring the article in question within the liberal construction that has been placed upon paragraph 649 (G. A. 6205; T. D. 27018). The protest is sustained so far as it relates to the "altarkreuz," and overruled in all other respects.

No. 14782.—Pipes With Bamboo Stems.—Protest 227721 of A. Marano against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 19, 1907. Opinion by Hay, G. A.

Clay pipe bowls with bamboo stems were held dutiable under the provision in paragraph 459, tariff act of 1897, for "pipes and pipe bowls of whatever material composed," as claimed by the importer. G. A. 6251 (T. D. 26966) followed.

No. 14783.—Protest Abandoned.—Protest 226518 of J. S. Newton & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 19, 1907.

Protest abandoned; overruled.

No. 14784.—Protest Unsupported.—Protest 226827 of Cohn Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 19, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

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No. 14785.—PROTESTS UNSUPPORTED.—Protests 224282, etc., of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News.

Same as No. 14784 (*supra*).

No. 14786.—PROTEST UNSUPPORTED.—Protest 226726 of Central Vermont Railway Company against the assessment of duty by the collector of customs at the port of Burlington. Opinion by Hay, G. A.

Same as No. 14784 (*supra*).

No. 14787.—PROTEST UNSUPPORTED.—Protest 222444 of Emery Candle Company against the assessment of duty by the surveyor of customs at the port of Cincinnati. Opinion by Hay, G. A.

Same as No. 14784 (*supra*).

No. 14788.—PROTEST UNSUPPORTED.—Protest 205566 of M. H. Wiltzius Company against the assessment of duty by the collector of customs at the port of Milwaukee. Opinion by Waite, G. A.

Same as No. 14784 (*supra*).

No. 14789.—PROTEST UNSUPPORTED.—Protest 203129 of Sundheimer Brothers. Before Board 2. Opinion by Howell, G. A.

Same as No. 14784 (*supra*).

No. 14790.—PROTESTS UNSUPPORTED.—Protests 226353, etc., of Judkins & McCormick Company. Before Board 2. Opinion by Fischer, G. A.

Same as No. 14784 (*supra*).

No. 14791.—PROTEST UNSUPPORTED.—Protest 231929 of G. J. Bauer. Before Board 1. Opinion by Lunt, G. A.

Same as No. 14784 (*supra*).

No. 14792.—WOOL WEARING APPAREL.—Protests 182562, etc., of L. Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 22, 1907. Opinion by Lunt, G. A.

So-called hats and crowns, which were classified as wool wearing apparel, were claimed to be composed in chief value of fur. Protests overruled.

No. 14793.—PINS—ORNAMENTS—MANUFACTURES OF METAL.—Protests 1912 *h* etc., of H. Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 22, 1907. Opinion by Sharretts, G. A.

The protests related to pins, ornaments, and other articles composed of metal or paste. The importers' contentions were sustained as to portions of the goods on the authority of Abstract 5635 (T. D. 26248), G. A. 6374 (T. D. 27882), and G. A. 6376 (T. D. 27390).

No. 14794.—LEATHER—RUBBER HIDES.—Protest 229733 of Evan Arthur Leigh against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, March 22, 1907. Opinion by McClelland, G. A.

So-called rubber hides, classified as manufactures of leather under paragraph 450, tariff act of 1897, were claimed to be dutiable as leather under paragraph 438. Protest sustained on the authority of Abstract 14842 (T. D. 27892).

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No. 14795.—LEATHER BUCKLES.—Protest 227573 of R. Neumann Hardware Company against the assessment of duty by the collector of customs at the port of Newark. Before Board 1, March 22, 1907. Opinion by McClelland, G. A.

The protest related to buckles claimed to be dutiable as manufactures in chief value of leather under paragraph 450, tariff act of 1897. Protest sustained. Note G. A. 3066 (T. D. 16102) and G. A. 5903 (T. D. 25990).

No. 14796.—STATUARY FOR HOSPITAL.—Protest 226725 of J. M. Colpas against the assessment of duty by the collector of customs at the port of Burlington. Before Board 3, March 22, 1907. Opinion by Waite, G. A.

A plaster statue for a hospital was held not to be entitled to admission free of duty under the provision in paragraph 649, tariff act of 1897, for such articles imported for religious and educational purposes, etc. Note G. A. 5699 (T. D. 25357).

No. 14797.—GLASS WINDOWS—PICTORIAL PAINTINGS.—Protest 222241 of Perry, Ryer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Waite, G. A.

The protest related to articles classified under the provision in paragraph 112, tariff act of 1897, for stained or painted glass windows, and claimed to be free of duty under paragraph 703, relating to pictorial paintings other than stained or painted glass windows. Protest overruled.

No. 14798.—DUTIABLE WEIGHT OF TOBACCO.—Protests 193080, etc., of Hugo V. Altshul *et al.* against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14799.—DUTIABLE WEIGHT OF TOBACCO.—Protests 189340, etc., of C. C. A. Cigar Company *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14798 (*supra*).

No. 14800.—DUTIABLE WEIGHT OF TOBACCO.—Protests 192135, etc., of F. Alvarez *et al.* and protests 230133, etc., of Daly & Frei *et al.* against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 14798 (*supra*).

No. 14801.—DUTIABLE WEIGHT OF TOBACCO.—Protests 203409, etc., of Friedman Leaf Tobacco Company *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14798 (*supra*).

No. 14802.—CHERRIES IN MARASCHINO—TIME OF EFFECT, ACT OF 1897.—Protests 28109*f*, etc., of E. La Montagne & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 3993 (T. D. 18537) and G. A. 6334 (T. D. 27276), relating, respectively, to cherries in maraschino and to the time of effect of the tariff act of 1897.

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No. 14803.—WASTE BAGGING—GUNNY CLOTH.—Protests 195155, etc., of Felix Salomon & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

The protests related to old gunny cloth and waste bagging, classified under paragraph 468, tariff act of 1897, as waste and claimed to be free of duty either under paragraph 632 as paper stock, or under paragraph 648 as rags. Protests overruled.

No. 14804.—LINEN THREAD WASTE.—Protest 223953, etc., of Amerman & Patterson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 5719 (T. D. 25422), relating to linen thread waste.

No. 14805.—PROTEST INSUFFICIENT—WATER.—Protest 224025 of T. G. Sullivan against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907.

The importation in question was classified as mineral water. The importer made the following claim in his protest: "Said cases did not contain mineral water, but contained well water, and should be entitled to free entry."

SOMERVILLE, *General Appraiser:* * * * The protest, in our opinion, is insufficient for want of definiteness. No paragraph of the free list is referred to in the protest, and the Board does not deem it any part of its duty to search the tariff act for the purpose of ascertaining whether the goods are free under any of its provisions.

No. 14806.—SAWDUST—ARTICLE FOR TANNING.—Protest 226935 of H. & A. Chapal Frères & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

The protest related to sawdust which, on the authority of G. A. 6526 (T. D. 27866), was held free of duty under paragraph 482, tariff act of 1897, as a crude article used for dyeing or tanning.

No. 14807.—PROTESTS ABANDONED.—Protests 96967 *f*, etc., of Reiss & Brady *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907.

Protests abandoned; overruled.

No. 14808.—PROTEST ABANDONED.—Protest 223463 of George B. Evans against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14807 (*supra*).

No. 14809.—PROTESTS ABANDONED.—Protests 204947, etc., of Isler & Guye *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 14807 (*supra*).

No. 14810.—PROTESTS UNSUPPORTED.—Protests 226355, etc., of Knauth, Nachod & Kühne against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 22, 1907. Opinion by Somerville, G. A.

Protests overruled for want of merit.

No. 14811.—PROTEST UNSUPPORTED.—Protest 229972 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 14810 (*supra*).

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No. 14812.—PROTEST UNSUPPORTED.—Protest 221701-22260 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14810 (*supra*).

No. 14813.—PROTESTS UNSUPPORTED.—Protests 207119, etc., of Lichtenstein Millinery Company *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 14810 (*supra*).

No. 14814.—PROTESTS UNSUPPORTED.—Protest 10086 *h* of Balch, Price & Co. and protest 230533 of J. & H. Rosenberg. Before Board 1. Opinions by Lunt, G. A.

Same as No. 14810 (*supra*).

No. 14815.—LITHYOL.—Protest 229395 of Innis, Spieden & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 23, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 6355 (T. D. 27323), relating to lithyol.

No. 14816.—ARISTOL.—Protests 222225, etc., of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 23, 1907. Opinion by Lunt, G. A.

So-called diiodide dithymol, or aristol, was held dutiable as a nonalcoholic medicinal preparation under paragraph 68, tariff act of 1897, as claimed by the importers. T. D. 21360 followed. In all other respects the protests were abandoned and were accordingly overruled.

No. 14817.—DUTIABLE WEIGHT OF TOBACCO.—Protests 225451, etc., of American Cigar Company *et al.* against the assessment of duty by the collector of customs at the port of New York. March 23, 1907.

Same as No. 14798 (*supra*).

No. 14818.—PROTEST FILED TOO LATE.—Protest 215182 of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, March 23, 1907. Opinion by Hay, G. A.

The protest was dismissed because not filed within the time prescribed by law.

No. 14819.—PROTEST ABANDONED.—Protest 229396 of Innis, Spieden & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 23, 1907. Opinion by Lunt, G. A.

Protest abandoned; overruled.

No. 14820.—PROTESTS ABANDONED.—Protests 225843, etc., of H. Herrmann *et al.* Opinion by McClelland, G. A.

Same as No. 14819 (*supra*).

No. 14821.—PROTEST UNSUPPORTED.—Protest 226271 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 23, 1907. Opinion by Hay, G. A.

Protest overruled for want of merit.

No. 14822.—PROTEST UNSUPPORTED.—Protest 204336 of Quong Tuck Company against the assessment of duty by the collector of customs at the port of Port Townsend. Opinion by Waite, G. A.

Same as No. 14821 (*supra*).

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No. 14823.—PROTESTS UNSUPPORTED.—Protests 229920, etc., of Julius Lehmann and protests 238479, etc., of A. Savettiere *et al.* Before Board 1. Opinions by McClelland, G. A.

Same as No. 14821 (*supra*).

No. 14824.—SILK BLANKETS.—Protest 222295 of Sucesores de Suau against the assessment of duty by the collector of customs at the port of San Juan. Before Board 1, March 25, 1907. Opinion by Lunt, G. A.

The protest related to blankets, which were classified as composed in part of wool but which the Board found to be composed of cotton and silk, silk the component of chief value. As the importers failed to claim that these articles were dutiable as manufactures in chief value of silk under paragraph 391, tariff act of 1897, the protest was overruled.

No. 14825.—HAT BODIES.—Protests 231125, etc., of J. & H. Rosenberg against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by Lunt, G. A.

The goods were held to have been properly classified under the provision in paragraph 432, tariff act of 1897, for fur hat bodies, and not as manufactures of fur under paragraph 450, as claimed by the importers.

No. 14826.—FISH IN TINS—FISH IN PACKAGES.—Protests 230537 and 229708 of Strohmeyer & Arpe Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinions by Lunt, G. A.

The protests related, respectively, to so-called tunny fish and to pickled eels. They were held to have been properly classified under paragraph 258, tariff act of 1897, the former as fish in tins and the latter as fish in packages containing less than one-half barrel.

No. 14827.—ACETATE OF COPPER.—Protests 229944, etc., of Roessler & Haslacher Chemical Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by Lunt, G. A.

The merchandise was found to be acetate of copper in the form of verdigris grapes, and was held to have been properly classified under paragraph 3, tariff act of 1897, as a chemical compound.

No. 14828.—ANTITOXINS—RAT VIRUS—MEDICINAL PREPARATIONS.—Protests 168306, etc., of Thomas Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907.

The articles in controversy were classified as medicinal preparations under paragraph 68, tariff act of 1897, and were claimed to be free of duty under paragraph 692 as vaccine virus.

LUNT, *General Appraiser:* The merchandise in question described on the invoices as tuberculin, rat virus, streptococcus antitoxin, tetanus antitoxin, and mallein, was assessed by the collector at the rate of 25 per cent ad valorem. * * *

In the case of Koechl *v.* United States (84 Fed. Rep., 448), the court in passing upon diphtheria antitoxin stated that "antitoxin is the well-known specific used by inoculation for the prevention and cure of diphtheria" and that "vaccine virus is the morbic principle of cowpox, which acts as a preventive of smallpox." The evidence in the cases at bar also brings out the fact that the term "vaccine virus" has a well-defined commercial meaning, and that it is usually applied to vaccine for smallpox; but there is no evidence to show that the merchandise here involved is used as a preventive of smallpox. On the contrary, it is shown that tuberculin, streptococcus

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antitoxin and tetanus are used by means of inoculation for the prevention, arresting, and curing of tuberculosis, pneumonia, and tetanus (lockjaw). We therefore find the merchandise so described to be medicinal preparations and hold it dutiable under paragraph 68 as assessed.

The merchandise invoiced as mallein is used as a virus for diagnosing glanders, and if used at an early stage of the disease, it may serve as a preventive, but in no case is it used as a curative.

The rat virus is a vaccine to destroy rats. It acts like a poison and is used as an exterminator. We therefore find the mallein and rat virus to be manufactured articles not enumerated and hold them dutiable under section 6 at 20 per cent ad valorem. This claim not having been made by the protestants, the protests are therefore overruled.

No. 14829.—MOTHER-OF-PEARL SLABS.—Protest 226854 of A. Kastor & Bros. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6515 (T. D. 27828), relating to mother-of-pearl slabs.

No. 14830. — STONE SLAB — LITHOGRAPHIC STONE. — Protest 227750 of Pisani Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907.

The importers contended that the articles in controversy had been improperly classified under paragraph 114, tariff act of 1897, relating to "marble or onyx, sawed or dressed, over two inches in thickness," but that they should have been classified free of duty under paragraph 601 as lithographic stone. Protest overruled.

MCCLELLAND, *General Appraiser:* The merchandise in question consists of a stone slab, 4 inches thick, about 40 inches long, and 20 inches in width. * * * The record shows that the merchandise is similar in material to that which formed the subject of G. A. 3803 (T. D. 17928); that the slab has been rubbed on one side, the edges being rough. It also appears from the evidence that lithographic stones are those which have been rubbed smooth, surface polished, edges rounded, and are in a condition ready for use by lithographers after the engraving has been cut thereon. The slab in question not having been subjected to the processes necessary to render it suitable for use as lithographic stone, after being engraved, would seem to preclude its admission to free entry as claimed.

No. 14831.—OLIVE OIL FOR MECHANICAL PURPOSES.—Protest 226860 of Stefano La Rosa against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by McClelland, G. A.

The protest related to olive oil, which was held free of duty under paragraph 626, tariff act of 1897, as fit only for mechanical purposes.

No. 14832.—GRANITE MONUMENTS.—Protests 226675, etc., of New York Granite Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Baldwin *v.* United States (149 Fed. Rep., 1022; T. D. 27802), relating to granite monuments.

No. 14833.—WOOD—SAWED STICKS.—Protest 225742 of A. W. Ware & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by McClelland, G. A.

The merchandise, which was classified as wood unmanufactured under paragraph 198, tariff act of 1897, consisted of soft wood sticks sawed on four sides, about 47 inches

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long, seven-eighths of an inch in cross section, stained or colored, being used in the manufacture of canes or umbrella handles. The importers contended that these sticks should have been classified either as unenumerated unmanufactured articles under section 6, or under paragraph 700 relating to certain kinds of wood "not further advanced than cut into block suitable for the articles into which they are intended to be converted." Protest overruled on the authority of Abstract 10281 (T. D. 27182).

No. 14834.—ALMOND MEAL.—Protest 225641 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 25, 1907. Opinion by McClelland, G. A.

On the authority of G. A. 6555 (T. D. 27965), almond meal was held dutiable as an unenumerated manufactured article under section 6, tariff act of 1897, as claimed in the protest.

No. 14835.—SILK AND RUBBER GALLOONS.—Protest 201388 of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, March 25, 1907. Opinion by Fischer, G. A.

Silk and rubber galloons, which were classified as manufactures in chief value of silk, were claimed to be dutiable as manufactures of rubber. The Board held they should have been classified under the provision in paragraph 390, tariff act of 1897, for galloons in chief value of silk, but as this contention was not made the protest was overruled.

No. 14836.—WASTE BAGGING—GUNNY CLOTH.—Protests 193005, etc., of A Katzenstein. March 25, 1907.

Same as No. 14808 (*supra*).

No. 14837.—WASTE BAGGING—GUNNY CLOTH.—Protests 194789, etc., of Moses Norris *et al.* against the assessment of duty by the collector of customs at the port of Baltimore. March 25, 1907.

Same as No. 14808 (*supra*).

No. 14838.—DUTIABLE WEIGHT OF TOBACCO.—Protests 216536, etc., of Crump Brothers *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, March 25, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14839.—DUTIABLE WEIGHT OF TOBACCO.—Protests 191058, etc., of Haas Brothers against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 14838 (*supra*).

No. 14840.—DUTIABLE WEIGHT OF TOBACCO.—Protests 192170, etc., of Rothschild & Bro. against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 14838 (*supra*).

No. 14841.—DUTIABLE WEIGHT OF TOBACCO.—Protests 190686, etc., of Jose Alvarez *et. al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14838 (*supra*).

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No. 14842.—FRUIT BOXES—AMERICAN SHOOKS.—Protests 171169, etc., of C. A. Waterman against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, March 25, 1907. Opinion by Somerville, G. A.

The articles in controversy were found to consist of fruit boxes from Palermo, the sides, tops, and bottoms of which were made of American shooks. As claimed by the importers, they were held subject to the provision for articles of this description in paragraph 205, tariff act of 1897.

No. 14843.—CHERRIES IN MARASCHINO.—Protests 25168 *f*, etc., of E. La Montagne & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 25, 1907. Opinion by Somerville, G. A.

G. A. 6334 (T. D. 27276) followed, relating to cherries in maraschino imported under the tariff act of 1894.

No. 14844.—MOUTHPIECES FOR PIPES—SMOKERS' ARTICLES.—Protest 226388 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 25, 1907. Opinion by Hay, G. A.

Hard rubber mouthpieces for pipes were held to have been properly classified as smokers' articles under paragraph 459, tariff act of 1897.

(T. D. 28037.)

Accounting forms for use in the customs service.

[Circular No. 21.]

TREASURY DEPARTMENT, *March 27, 1907.*

To collectors and other officers of the customs:

On and after April 1, 1907, all fiscal transactions of customs officers under the jurisdiction of the Treasury Department will be reported and accounted for on the new or amended forms described below.

The new forms are in substitution of the old forms hereinafter enumerated, and said old forms must not be used again in connection with any accounts forwarded to the Department, but must be destroyed, unless they can be used as waste material.

The instructions printed on the new forms must be strictly observed and any account or statement not prepared in accordance therewith or which is rendered on the old form will be returned.

The accounts for March will be rendered on the old forms.

The forms prescribed are as follows:

Cat. No. 1. New form of Consolidated account current for use at nonnaval office ports.

Cat. No. 1*a*. New form of Consolidated account current for use at naval office ports.

These forms are to be used in place of the following forms and records:

Account current, Receipts from customs, blank and book, Cat. No. 1.

Account current, Philippine Islands duties, Cat. No. 1½.

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Account current, Expenses of collecting the revenue, blank and book, Cat. No. 81.
Account current, blank form, Cat. No. 112.
Account current, Excess of deposits, Cat. No. 125.
Account current, Drawbacks and debentures, Cat. No. 135.
Account current, Compensation in lieu of moieties, Cat. No. 140.
Abstract of deposits, Cat. No. 16.
Report of no transactions, Cat. No. 155.
Statement of accounts mailed and rendered, Cat. No. 156,
Report of seizures disposed of, Cat. No. 237.
Account current, Fines, N. Y. Cat. No. 82*b*.
Account current, Expenses of collection, N. Y. Cat. No. 84*b*.
Account current, Excess of deposits, N. Y. Cat. No. 86*b*.
Account current, Drawbacks, N. Y. Cat. No. 87*b*.
Account current, blank account, N. Y. Cat. No. 90.
Account current, Receipts from customs, N. Y. Cat. No. 151*b*.

Until a book record of the accounts is prepared the accounts will be made in duplicate and a copy retained in the custom-house files.

Cat. No. 8. New form of Abstract of increased and additional duties collected to be used in place of:

Abstract of increased duties collected, Cat. No. 8.
Abstract of increased duties collected on withdrawals, Cat. No. 9.
Abstract of additional duties collected, Cat. No. 10.

Cat. No. 82. New form of Abstract of disbursements to be used in place of:

Abstract of disbursements, Cat. No. 82.
Abstract of disbursements, Revenue-Cutter Service, Cat. No. 106.
Abstract of disbursements, Cat. No. 113.

Cat. No. 86. New form of pay roll to be used in place of:

Pay roll in collector's office, Cat. No. 86.
Pay roll in naval office, Cat. No. 875.
Pay roll in surveyor's office, Cat. No. 933.
Pay roll in appraiser's office, Cat. No. 982.
Pay roll in collector's office, N. Y. Cat. No. 29.
Pay roll in naval office, N. Y. Cat. No. 830½.

Cat. No. 88*a*. New form of Voucher roll for claims and adjustments to be used in place of:

Voucher in satisfaction of judgment, Cat. No. 130.
Voucher for claim, Cat. No. 131.
Voucher for claim as informant, Cat. No. 143.
Voucher for night service refunded, N. Y. Cat. No. 18.
Voucher for fees refunded, N. Y. Cat. No. 26.

Cat. No. 88*b*. New form of Individual voucher for refund of night service, payment of awards, claims, judgments, excess of deposits, etc., to be used when signature can not be obtained on Cat. No. 88*a* or 127*b*.

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Cat. No. 89. New form of Voucher for personal services to be used in place of:

Voucher for services, Cat. No. 89.
Storekeeper's voucher, Cat. No. 91¼.
Inspector's voucher, collector's office, Cat. No. 91½.
Inspector's voucher, surveyor's office, Cat. No. 917.
Voucher for services, N. Y. Cat. No. 29½.
Storekeeper's voucher, N. Y. Cat. No. 321.
Voucher for services, N. Y. Cat. No. 830.
Voucher for services, N. Y. Cat. No. 905.
Inspector's voucher, N. Y. Cat. No. 958.

Cat. No. 90. A form of voucher for purchases and services other than personal to be used in place of:

Voucher for purchases, etc., Cat. No. 90.
Voucher for purchases, N. Y. Cat. No. 5½.
Voucher for purchases, N. Y. Cat. No. 28.

Cat. No. 105. New form of consolidated account current (accounts stated under voluntary bonds) to be used in place of:

Account current, Revenue-Cutter Service, Cat. No. 105.
Account current, general form, Cat. No. 112.
Account current, Revenue-Cutter Service, N. Y. Cat. No. 85*b*.

Cat. No. 127*b*. New form of voucher roll for refund of duties to be used in place of the following old forms:

Abstract of estimated duties refunded, Cat. No. 126.
Abstract of estimated duties refunded, Cat. No. 127*a*.
Voucher for refund of duties, Cat. No. 127*b*.
Voucher for refund of duties, N. Y. Cat. No. 64.

Cat. No. 136. New form of Abstract of drawbacks to be used in place of:

Abstract of drawbacks paid on coal, Cat. No. 20.
Abstract of drawbacks paid on domestic manufactures, Cat. No. 136.
Abstract of drawbacks paid on salt, N. Y. Cat. No. 51.
Abstract of drawbacks paid, N. Y. Cat. No. 68*b*.
Abstract of drawbacks paid, N. Y. Cat. No. 69*b*.

Cat. No. 137. New form of Abstract of debentures issued to be used in place of:

Abstract of debentures issued, Cat. No. 137.
Abstract of debentures issued, N. Y. Cat. No. 645.

Cat. No. 791. New form of debenture certificate to be used in place of:

Debenture certificate of warehouse goods exported, Cat. No. 789.
Debenture certificate of manufactured goods, Cat. No. 791.
Debenture certificate of coal exported, Cat. No. 832.
Debenture certificate, N. Y. Cat. No. 639.
Debenture certificate, N. Y. Cat. No. 640.

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The serial number of the certificate will hereafter be printed on the form, and articles 1195, 1204, and 1208, Customs Regulations, 1899, are accordingly amended.

AMENDED FORMS.

The following forms have been amended:

Abstract of estimated duties paid on immediate-consumption entries for use at nonnaval office ports, Cat. No. 2c.

Abstract of service in private bonded stores, Cat. No. 92.

Abstract of storage, labor and drayage collected, Cat. No. 94.

Abstract of night service collected, Cat. No. 96½.

Abstract of fees, under act of June 10, 1890 (book thereof abolished), Cat. No. 153.

Certificate of services performed, Cat. No. 154.

Estimate for funds, naval office, and other large ports, Cat. No. 172*a*.

Estimate for funds, nonnaval office ports, Cat. No. 172*b*.

Statement of duties paid on salt used on meats, Cat. No. 177.

Statement of duties paid on salt used on meats, N. Y. Cat. No. 671.

The receipt required by article 1204, Customs Regulations, 1899, on the statement of duties paid on salt will no longer be required. The debenture certificate, Cat. No. 791, will hereafter answer the purpose.

Statement of immediate-transportation merchandise received and forwarded to ports of destination (for use at all ports), Cat. No. 197.

Report of immediate-transportation goods received at ports of destination, Cat. No. 198.

This abstract [Cat. No. 198] to be used at naval office ports only; at all nonnaval office ports the use of this abstract is to be discontinued.

Letter transmitting moneys, Cat. No. 402.

Abstract of importations by mail, Cat. No. 1013.

Form discontinued, Return of moneys, Cat. No. 230.

Form discontinued, Return of moneys, N. Y. Cat. No. 95*b*.

All deposits, whether made in person, by express, or other means, must hereafter be accompanied by statement on amended form Cat. No. 402, addressed to the depositary, carefully specifying the sources from which the moneys were received and the fiscal year in which the same were collected or the appropriation to which the same belong. The counting, sealing, and dispatching of the moneys must be witnessed by some disinterested employee or other person.

Customs officers will hereafter include in the estimates for funds on Cat. No. 172*a* or 172*b* the compensation earned by them as collectors or surveyors of customs whether the services were performed

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under the jurisdiction of the Treasury Department or the Department of Commerce and Labor. The estimate to include salary, commissions on duties, and tonnage, customs fees, storage, navigation fees, fees for services to American vessels under the act of June 19, 1886, fees on goods passing through the customs under the act of June 10, 1890, and fees for entrance and clearance on the northern border under the act of March 3, 1897.

In the preparation of accounts on the new forms, reference should be had to the model form of account set forth in Circular 46 of 1906.

The date of mailing will hereafter be noted on the brief of each account current.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28038.)

Balata.

Decision of the United States circuit court, southern district of New York, Earle Brothers *v.* United States (T. D. 27977), involving the classification of balata, acquiesced in.

TREASURY DEPARTMENT, *March 29, 1907.*

SIR: The Department is in receipt of a report from the United States attorney for the southern district of New York, in which he states that the appeal to the United States circuit court for the southern district of New York, Earle Brothers *v.* United States (suit 4313; T. D. 27977), was recently decided by that court adversely to the Government.

The merchandise in suit consisted of what has heretofore been known as "balata," a species of rubber. The collector assessed duty upon the article as a nonenumerated unmanufactured article under section 6 of the tariff act of 1897 at the rate of 10 per cent ad valorem. The importers filed a protest claiming the merchandise to be entitled to free entry as india rubber, crude, under paragraph 579, or alternatively, as crude gum, under paragraph 548, or as gutta-percha, under paragraph 570, and the court sustained the contention of the importers that the merchandise was properly dutiable as india rubber, crude, under paragraph 579.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward the usual certified statement for the refund of the duties collected in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(32321.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28039.)

Date of exportation.

Date of sailing to be stamped on invoices when necessary, under T. D. 27995, and not date of clearance of vessel when different.

TREASURY DEPARTMENT, *March 30, 1907.*

SIR: In a case where the date of actual sailing is different from that of the formal clearance of the vessel from the foreign port, the former date should be stamped on the invoice, when necessary, under T. D. 27995 of March 11, 1907, for the purposes of section 19 of the act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(44040.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28040.)

Olive oil in tins.

The United States weigher's return of the net weight of olive oil in tins should be converted into gallons on the basis of 7.56 pounds to the gallon.—United States *v.* Zucca and United States *v.* Luzzatto (T. D. 28002) acquiesced in.

TREASURY DEPARTMENT, *March 30, 1907.*

SIR: The Department is in receipt of two reports from the United States attorney for the southern district of New York, United States *v.* Zucca & Co., suit 4475, and United States *v.* G. Luzzatto, suit 4493 (T. D. 28002), which he states were recently decided by the United States circuit court for the southern district of New York adversely to the Government.

The merchandise in suit consists of olive oil in tin cans, the nominal capacity of which is variously described as 1-gallon, 2-gallon, and 5½-gallon cans upon which duty was assessed under paragraph 40 of the tariff act at the rate of 50 cents per gallon.

The Board found that the evidence submitted showed without conflict that a gallon of oil weighs accurately 7.56 pounds or 3.43 kilos, and the court accepted as correct this finding of the Board and affirmed its decision.

The Attorney-General advises this Department that no further proceedings will be held in these cases, and you are therefore hereby authorized to forward to the Department certified statement in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(31257.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28041.)

Values of foreign coins.

[Circular No. 22.]

TREASURY DEPARTMENT, *April 1, 1907.*

In pursuance of the provisions of section 25 of the act of August 28, 1894, I hereby proclaim the following estimate by the Director of the Mint of the values of foreign coins to be the values of such coins in terms of the money of account of the United States, to be followed in estimating the value of all foreign merchandise exported to the United States on and after April 1, 1907, expressed in any of such metallic currencies.

GEORGE B. CORTELYOU, *Secretary.*

ESTIMATE BY DIRECTOR OF THE MINT OF VALUES OF FOREIGN COINS.

Country.	Standard.	Monetary unit.		Value in terms of U.S. gold dollar.	Coins.
Argentine Republic.	Gold	Peso		$0.965	Gold: argentine ($4.824) and ½ argentine. Silver: peso and divisions.
Austria-Hungary.	Gold	Crown		.203	Gold: 10 and 20 crowns. Silver: 1 and 5 crowns.
Belgium	Gold	Franc		.193	Gold: 10 and 20 francs. Silver: 5 francs.
Bolivia	Gold	Peso*		.9733	Gold: sovereign (pound sterling) and ½ sovereign. Silver: 10, 20, and 50 centavos.
Brazil	Gold	Milreis		.546	Gold: 5, 10, and 20 milreis. Silver: ½, 1, and 2 milreis.
British Possessions, N. A. (except Newfoundland).	Gold	Dollar		1.000	
Central American States—					
Costa Rica	Gold	Colon		.465	Gold: 2, 5, 10, and 20 colons ($9.307). Silver: 5, 10, 25, and 50 centimos.
British Honduras	Gold	Dollar		1.000	
Guatemala, Honduras, Nicaragua, Salvador	Silver	Peso		.500	Silver: peso and divisions.
Chile	Gold	Peso		.365	Gold: escudo ($1.825), doubloon ($3.650), and condor ($7.300). Silver: peso and divisions.
China	Silver	Tael	Amoy	.819	
			Canton	.817	
			Cheefoo	.784	
			Chin Kiang	.800	
			Fuchau	.758	
			Haikwan (customs).	.834	
			Hankow	.767	
			Kiaochow	.794	
			Nankin	.811	
			Niuchwang	.768	
			Ningpo	.788	
			Peking	.799	
			Shanghai	.748	
			Swatow	.757	
			Takau	.825	
			Tientsin	.794	
		Dollar	Hongkong	.539	
			British	.539	
			Mexican	.543	
Colombia	Gold	Dollar		1.000	Gold: condor ($9.647) and double-condor. Silver: peso.
Denmark	Gold	Crown		.268	Gold: 10 and 20 crowns.

*Peso one-fifth of pound sterling.

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ESTIMATE BY DIRECTOR OF THE MINT OF VALUES OF FOREIGN COINS—Continued.

Country.	Standard.	Monetary unit.	Value in terms of U.S. gold dollar.	Coins.
Ecuador	Gold	Sucre	$0.487	Gold: 10 sucres ($4.8665). Silver: sucre and divisions.
Egypt	Gold	Pound (100 piasters).	4.943	Gold: pound (100 piasters), 5, 10, 20, and 50 piasters. Silver: 1, 2, 5, 10, and 20 piasters.
Finland	Gold	Mark	.193	Gold: 20 marks ($3.859), 10 marks ($1.93).
France	Gold	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
German Empire	Gold	Mark	.238	Gold: 5, 10, and 20 marks.
Great Britain	Gold	Pound sterling	4.866½	Gold: sovereign (pound sterling) and ½ sovereign.
Greece	Gold	Drachma	.193	Gold: 5, 10, 20, 50, and 100 drachmas. Silver: 5 drachmas.
Haiti	Gold	Gourde	.965	Gold: 1, 2, 5, and 10 gourdes. Silver: gourde and divisions.
India (British)	Gold	Pound sterling*.	4.866½	Gold: sovereign (pound sterling). Silver: rupee and divisions.
Italy	Gold	Lira	.193	Gold: 5, 10, 20, 50, and 100 lire. Silver: 5 lire.
Japan	Gold	Yen	.498	Gold: 5, 10, and 20 yen. Silver: 10, 20, and 50 sen.
Liberia	Gold	Dollar	1.000	
Mexico	Gold	Peso †	.498	Gold: 5 and 10 pesos. Silver: dollar ‡ (or peso) and divisions.
Netherlands	Gold	Florin	.402	Gold: 10 florins. Silver: 2½, 1 florin and divisions.
Newfoundland	Gold	Dollar	1.014	Gold: 2 dollars ($2.027).
Norway	Gold	Crown	.268	Gold: 10 and 20 crowns.
Panama	Gold	Balboa	1.000	Gold: 1, 2½, 5, 10, and 20 balboas. Silver: peso and divisions.
Persia	Silver	Kran	.092	Gold: ½, 1, and 2 tomans ($3.409). Silver: ¼, ½, 1, 2, and 5 krans.
Peru	Gold	Libra	.866½	Gold: ½ and 1 libra. Silver: sol and divisions.
Philippine Islands.	Gold	Peso	.500	Silver peso: 10, 20, and 50 centavos.
Portugal	Gold	Milreis	1.080	Gold: 1, 2, 5, and 10 milreis.
Russia	Gold	Ruble	.515	Gold: 5, 7½, 10, and 15 rubles. Silver: 5, 10, 15, 20, 25, 50, and 100 copecks.
Spain	Gold	Peseta	.193	Gold: 25 pesetas. Silver: 5 pesetas.
Straits Settlements.	Gold	Pound sterling §	4.866½	Gold: Sovereign (pound sterling). Silver: Dollar and divisions.
Sweden	Gold	Crown	.268	Gold: 10 and 20 crowns.
Switzerland	Gold	Franc	.193	Gold: 5, 10, 20, 50, and 100 francs. Silver: 5 francs.
Turkey	Gold	Piaster	.044	Gold: 25, 50, 100, 250, and 500 piasters.
Uruguay	Gold	Peso	1.034	Gold: peso. Silver: peso and divisions.
Venezuela	Gold	Bolivar	.193	Gold: 5, 10, 20, 50, and 100 bolivars. Silver: 5 bolivars.

NOTE.—The coins of silver-standard countries are valued by their pure silver contents, at the average market price of silver for the three months preceding the date of this circular.

* The sovereign is the standard coin of India, but the rupee ($0.3244½) is the current coin, valued at 15 to the sovereign.

† Seventy-five centigrams fine gold. ‡ Value in Mexico. $0.498.

§ The current coin of the Straits Settlements is the silver dollar issued on Government account, and which has been given a tentative value of $0.567758½.

(T. D. 28042.)

Extension of courtesies to persons arriving from foreign countries.

[Circular No. 24.]

TREASURY DEPARTMENT, *April 1, 1907.*

To collectors and other officers of the customs:

Special courtesies to arriving passengers shall consist of the free entry, without examination, of the baggage and effects of themselves,

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their families, and suites. Such courtesies are to be strictly limited and are to be extended only to the following:

Foreign ambassadors, ministers, chargés d'affaires, secretaries, naval, military, and other attachés of embassies and legations, high commissioners, and consuls-general; similar representatives of this Government abroad returning from their missions, and such high officials of this and foreign Governments as shall be the subjects of special instructions from this Department.

In the case of invalids and their companions, and of persons arriving in charge of their dead, or summoned home in haste by news of affliction or disaster, or because of other imperative emergency, instructions will be issued to facilitate the landing and examination of their baggage. Such instructions will be construed only as relieving such persons from waiting their turn in line. Their baggage will be carefully examined and duties in full collected.

Such landing and baggage examination shall be expedited only on written order, signed either by the collector and countersigned by the surveyor, or by the Secretary or Assistant Secretary of the Treasury.

Ladies traveling alone shall have precedence in the examination of baggage.

Protection to the public revenues renders it necessary to restrict the issuance of passes on revenue vessels to those granted for good and sufficient cause, and no one is authorized to grant such permits except the Secretary of the Treasury, Assistant Secretary, or the collector and surveyor acting jointly.

Costumes, regalia, and other articles for the official use of diplomatic and consular officers will be admitted free of duty on arrival of such officers or at any time subsequently.

You will be governed accordingly.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28043.)

Cloth boards exported and returned.

Cloth boards exported to be wrapped with foreign textiles and returned to be treated under the regulations governing the exportation and reimportation of box shooks.

TREASURY DEPARTMENT, *April 1, 1907.*

SIR: Referring to your letter of January 12 last, relative to the treatment of cloth boards exported to be wrapped with foreign textiles and returned under the regulations governing the exportation and return of box shooks, I have to inform you that the Secretary of State has this day been requested to instruct the American consul at Bradford, England, to treat such boards under the provisions of article 714 of the consular regulations of 1896 and articles 493–497 of the Customs Regulations of 1899, and that in case such boards are

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changed in identity or advanced in value or improved in condition while abroad, such fact should be noted on the certificates issued therefor in order that free entry may be denied by the collector of customs at the port of entry.

You will be governed accordingly.

Respectfully, JAMES B. REYNOLDS,
(43180.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28044—G. A. 6567.)

Entireties—Automobile and tires.

An automobile or a chassis on wheels, with the tires therefor, whether the latter are on the wheels or separately packed, constitutes an entirety and should be treated as such in the assessment of duty.—United States *v.* Irwin (78 Fed. Rep., 799), Blumenthal *v.* United States (72 Fed. Rep., 48), *In re* Crowley (55 Fed. Rep., 288), G. A. 6489 (T. D. 27759), and G. A. 6490 (T. D. 27760), cited and followed.

United States General Appraisers, New York, March 28, 1907.

In the matter of protests 222154, etc., of Auto Import Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers; DE VRIES, G. A., absent).

FISCHER, *General Appraiser:* The merchandise herein consists of complete automobiles "with tools and accessories," so-called. Duty was assessed on the articles as entireties at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, metal being the component material of chief value therein. The claim in the protests is that the tires, being made of rubber, are properly separately dutiable at 30 per cent under paragraph 449. No objection is taken to the assessment as made by the collector on the body of the automobile as distinguished from the chassis, although it is made in chief value of wood, nor on the cushions, although they are in chief value of leather.

The claim herein set up is opposed to both reason and authority. Just why the tires are not as much a part of the machines as the chain gearing, the wheels, the lamps, the brake, the seats, the wooden body, etc., has not been made clear to us. The tires accompany each machine; are packed in the same case with it; they are of the particular size for and are intended to be used on it, and without them the machine would be practically useless. Although not a determining factor in the consideration of this case, it is worthy of note that in many of the cases at bar the automobiles were invoiced at a price including the tires, and the price of the latter was then deducted and separately itemized on the invoice. Neither this clumsy device, nor that of originally itemizing the tires separately, nor that of leaving the tires off the wheels and placing them in the

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case apart, can have the effect of changing the classification of the automobiles as entireties, for such they are both in fact and intention. Each case on the invoice contained a complete automobile with tires or a complete chassis with tires, as the case may be. It is also in evidence, by one of the importer's witnesses, that the machines are frequently imported with the tires actually on them, and that up to about three years ago that was the only way they ever were imported.

It is clear, too, that the weight of authority is against the contention of the importers herein. In United States *v.* Irwin (78 Fed. Rep., 799) gun barrels and gunstocks, with locks, etc., constituting all the parts of breech-loading shotguns, were held to be dutiable as entireties (shotguns) notwithstanding that the barrels and stocks were separately packed and invoiced. Note, also, Blumenthal *v.* United States (72 Fed. Rep., 48) and *In re* Crowley (55 Fed. Rep., 283), followed by the Board in G. A. 6489 (T. D. 27759), wherein a complete road roller, packed in parts, was held dutiable as an entirety, and in G. A. 6490 (T. D. 27760), wherein a card clothing machine, packed in parts, was held, with the necessary card clothing therefor, to be dutiable as an entirety.

As we remarked in G. A. 6489 (T. D. 27759), bulky machines are usually imported in a knocked-down condition—any other mode of shipping them is impracticable—but they are nevertheless entireties and dutiable as such just as if they arrived set up. To hold, as the importers ask us to do here, that the tires belonging to and accompanying an automobile and forming part of it are separately dutiable from it would be to rule that the nuts, bolts, beams, angle irons, etc., that may enter into the composition of a machine should be separately dutiable under the various provisions of the tariff law in which such articles are enumerated. It is well settled that if the subject of an importation be a recognized entity as a complete article, by which we mean that it has been advanced from the class of material by a process of manufacture or assembling into an automobile, a road roller, a carding machine, etc., it is dutiable as an entirety.

There is no reason why the rubber tires should be segregated for dutiable purposes any more than the body of the vehicle, when there is one, which is usually of wood, or the leather or cloth in the upholstering, or the chains, axles, bolts, or nuts which enter into the construction of the machines, all of which are covered by provisions of the tariff law equally specific with that for manufactures of india rubber.

We entertain no doubt that the action of the collector in regarding the automobiles as entireties for the purpose of assessing duty was in accordance with the law, and his decision in each case is affirmed, the protests being overruled.

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In protests 224187 and 227047 no evidence was offered by the importers, but they submitted the cases for favorable decision in view of the ruling of the court in Hillhouse *v.* United States (T. D. 27831; C. C. A., January 8, 1907), wherein the doctrine was laid down that an automobile used abroad for not less than a year could be treated as dutiable in part and free in part. To extend the doctrine of this case would result in such a startling innovation in customs administration and law, and a radical departure from immemorial usage, that we forbear to initiate it.

(T. D. 28045—G. A. 6568.)

Calender rolls of metal and paper.

Calender rolls made by turning many thicknesses of paper around a steel core or shaft under hydraulic pressure, the metal and the paper being of equal value prior to their being put together, are dutiable under the provisions of paragraph 193, tariff act of 1897, as articles composed wholly or in part of metal, wholly or partly manufactured, the circumstance that, by adding to the value of the paper the cost of the labor of applying the paper to the metal core, the paper is made to appear to be the component material of chief value in the completed article, being immaterial. Where the classification of an article depends on the component material of chief value therein, the value of the different materials should be taken at the time they are put together, and the cost of the labor applied to any of the materials in the process of putting them together should be disregarded.—Seeberger *v.* Hardy (150 U. S., 420); United States *v.* Hoeninghaus (137 Fed. Rep., 478; T. D. 26125), United States *v.* Johnson (T. D. 28007), Hamano *v.* United States (Estee's Hawaiian Reports, 344; T. D. 24946), G. A. 6269 (T. D. 27051), and G. A. 6537 (T. D. 27888), cited and followed.

United States General Appraisers, New York, March 29, 1907.

In the matter of protest 224088 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers; DE VRIES, G. A., absent).

FISCHER, *General Appraiser:* The merchandise consists of rollers for a paper-calendering machine, composed of a steel shaft covered over with paper by the method described below. Duty was assessed on the rollers at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, in accordance with the return of the appraising officer, that the metal in the articles preponderated in value. The claim of the importers is that the paper considerably exceeds the metal in value and that duty should be assessed at 35 per cent under paragraph 407 of said act, as manufactures in chief value of paper.

On the representations of importers' counsel as to the difficulty of proof consequent on the impracticability of producing the merchandise at a hearing, the Board requested the appraiser at Buffalo, where

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the rollers have been set up, to examine them and make a report as to the component material of chief value therein, having before him a statement as to the method of the manufacture of the rollers. His report is as follows:

These rolls are made by pressing on to a metal shaft which is about 8 inches in diameter, a series of paper laminations about 18 to 20 inches in diameter. This paper is pressed on the shaft by hydraulic pressure at an enormous pressure so as to virtually make a solid paper roll. When pressed on to the shaft, the roll is then turned down until the surface is perfectly smooth.

The metal and paper in their crude state are, in my opinion, of about equal value, but the work of pressing on the paper and truing it up appears to me to be much more costly than the mere turning of the metal shaft and collars. I would therefore return the merchandise as a manufacture of paper and metal, paper chief value, at 35 per cent.

Such a return would be in error. It is now well settled that in ascertaining the component material of chief value in an article, for the purpose of classification for duty, the values of the several materials entering into the composition or construction of the article should be taken in their condition as it was at that stage when, the materials having been assembled, nothing remained to be done but to put them together. In Seeberger *v.* Hardy (150 U. S., 420) it was held that the value of the metal, glass, and shell of which the opera glasses there in question were made "should be taken at the time they are put together to form the completed glass." A very recent application of this doctrine is found in the case of United States *v.* Johnson, decided March 5, 1907, by the circuit court of appeals, second circuit (T. D. 28007), and the ruling therein is precisely in point. It was there held that catheters composed of a cotton core covered with varnish, the labor attendant upon the application of the varnish being by far the largest element in the cost of production of the catheters, but the cotton exceeding the varnish in value at the time they were brought together, were dutiable properly as manufactures in chief value of cotton, the amount of labor applied to any of the various materials during the process of manufacture being disregarded. Note, also, United States *v.* Hoeninghaus (137 Fed. Rep., 478; T. D. 26125).

In accordance with these rulings we hold that the paper and the metal being equal in value, the rolls here in question are dutiable, not under paragraph 407, which provides only for articles in which paper is the component material of chief value, but under paragraph 193 as "articles or wares not specially provided for in this Act, composed wholly or in part of * * * steel * * * whether partly or wholly manufactured." Note Hamano *v.* United States (Estee's Hawaiian Reports, 344; T. D. 24946), G. A. 6269 (T. D. 27051), and G. A. 6537 (T. D. 27888).

The protest is overruled and the decision of the collector affirmed.

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(T. D. 28046—G. A. 6569.)

Entireties—Furnished toilet cases.

Furnished toilet cases made of leather, fitted with metal-topped glass bottles, leather predominating in value, shown to be entireties in trade, commerce, and usage, held to be such for tariff purposes, and dutiable as manufactures in chief value of leather, under the provisions of paragraph 450, tariff act of 1897.—G. A. 6220 (T. D. 26887), on furnished needlecases, followed.

United States General Appraisers, New York, March 29, 1907.

In the matter of protests 220717, etc., of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers; DE VRIES, G. A., absent).

FISCHER, *General Appraiser:* The merchandise consists of furnished toilet cases made of leather, fitted with metal-topped glass bottles. Duty was assessed separately, on the cases at the rate of 35 per cent under the provisions of paragraph 450, tariff act of 1897, as manufactures of leather, and on the bottles at the rate of 45 per cent under paragraph 193, as manufactures of metal and glass, metal chief value. The claim of the importers is that the articles are entireties and should be dutiable as such, at the rate of 35 per cent as manufactures of leather.

It is admitted that the leather is worth more than the other portions of the articles, and we are of opinion that the contention of the importers is sound. It appears from the testimony both of the examiner who passed the goods and that of the importers' witness, that the articles are always imported as entireties. The importers' witness testified that they are sold complete, and the examiner stated that he passed them as entireties when they were contained in the case ordered for examination and actually came under his observation. The imported articles are not bottles in ordinary covers, but leather cases containing toilet articles, and as imported are entireties. The issue is the same as that passed upon in G. A. 6220 (T. D. 26887), in the matter of furnished needlecases, and, in accordance with the reasoning in said decision and the authorities therein cited, we hold that these furnished toilet cases are dutiable properly as entireties in which leather is the component material of chief value. This claim in the protest is sustained and the decision of the collector modified to that extent. All other claims are overruled.

The particular items involved are 252–11 and 32 in case 6321, and 261–11 and A 174 and 262–11 and A 567, in case 6349.

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(T. D. 28047—G. A. 6570.)

Dyers' sticks.

Sticks cut into lengths of about 4 feet with ends rounded and joints smoothed, known as "dyers' sticks," when made of bamboo are entitled to entry free of duty under the provisions of paragraph 700; when made of wood other than bamboo are dutiable at the rate of 20 per cent ad valorem under the provisions of paragraph 198, tariff act of 1897.—Abstracts 11126 and 11127 (T. D. 27331) and United States *v.* Knipscher & Maas Silk Dyeing Company (T. D. 27855) followed.

United States General Appraisers, New York, April 1, 1907.

In the matter of protests 195118, etc., of Knipscher & Maas Silk Dyeing Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise covered by these protests was returned by the appraiser as "manufactures of wood." Duty was assessed thereon at the rate of 35 per cent ad valorem under the provisions of paragraph 208, tariff act of 1897. Among the rates claimed for lower duty than that assessed is one for 20 per cent ad valorem under the provisions of paragraph 198, and also free entry under the provisions of paragraph 700 of said act.

Dyers' sticks of bamboo and hazel wood, cut into lengths of about 4 feet with ends rounded and joints smoothed, similar to those now under consideration, formed the subject of Abstracts 11126 and 11127 (T. D. 27331), wherein the Board held that sticks made of bamboo were entitled to free entry under paragraph 700, and those made of hazel wood were dutiable at the rate of 20 per cent ad valorem under paragraph 198.

On appeal from those decisions to the United States circuit court, southern district of New York (suits 4249–50), the action of the Board in each case was affirmed (T. D. 27855).

From the record in these cases we find that the merchandise covered by protests 198631 and 213102 consists of dyers' sticks made of bamboo and is entitled to free entry under paragraph 700 as claimed; that the merchandise covered by the other protests mentioned in this decision consists of dyers' sticks made of wood other than bamboo and is dutiable at the rate of 20 per cent ad valorem under paragraph 198 as claimed.

On the authority of the court ruling above cited, the protests are sustained to the extent indicated and the collector's decisions reversed accordingly. In all other respects the protests are overruled.

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(T. D. 28048—G. A. 6571.)

Wearing apparel—Varnished hats.

Varnished hats, such as coachmen wear, in which the most valuable single component material is shown to be the cotton buckram foundation, are dutiable as wearing apparel of which cotton is the component material of chief value, under the provisions of paragraph 314, tariff act of 1897. The cost of the labor incident to putting the materials together to make a completed article is no part of the value of such materials.—Seeberger *v.* Hardy (150 U. S., 420), United States *v.* Hoeninghaus (137, Fed. Rep., 478), and United States *v.* Johnson (T. D. 28007) cited and followed.

United States General Appraisers, New York, April 1, 1907.

In the matter of protests 177147, etc., of L. Toplitz & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers; DE VRIES, G. A., absent).

FISCHER, *General Appraiser:* The merchandise consists of varnished hats, such as coachmen wear, made of a buckram foundation, covered over with paper, and then heavily varnished, and of tops for the same made of paper and similarly varnished. Duty was assessed on the hats at the rate of 50 per cent ad valorem under the provisions of paragraph 314, tariff act of 1897, as wearing apparel in which cotton is the component material of chief value, and on the tops for hats as manufactures of paper at 35 per cent under paragraph 407. The importers claim the merchandise to be dutiable properly at 35 per cent under paragraph 407 or at 20 per cent under section 6.

It appears from the testimony that in the manufacture of the hats paper is first stretched over and fitted on a buckram frame and then varnished over repeatedly and baked. An affidavit from the manufacturer states that the value of the buckram frame is 3 marks per dozen, that of the paper 1 mark per dozen, and "oil and material used for japanning" 3.50 marks per dozen. The remaining items of the cost of production are for labor in putting the materials together, and they constitute by far the largest portion of such cost. They can not be considered, however, in ascertaining the value of the component materials, because the charges for labor were incurred after the materials were complete as materials and ready to be put together to make the hats. Seeberger *v.* Hardy (150 U. S., 420), United States *v.* Hoeninghaus (137 Fed. Rep., 478), and United States *v.* Johnson (T. D. 28007).

The manufacturer's affidavit shows, then, that the most valuable single component material is the cotton buckram, for the item of 3.50 marks is a composite one, and there is nothing before us to indicate just what it comprises. The items that make up the value of the tops are not given at all.

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We find from the testimony, samples, and manufacturer's affidavit that the hats are made in chief value of cotton, and we hold that they are dutiable as wearing apparel under paragraph 314. We also hold that the tops are dutiable under paragraph 407, as assessed. The protests are overruled and the decision of the collector affirmed in each case. It should be added that, even if the varnish were found to be the component material of chief value, the protests would still be overruled as not making the proper claim.

(T. D. 28049—G. A. 6572.)

Birds, stuffed—Not suitable for millinery ornaments.

Birds which have been stuffed with cotton or tow but not wired, but so prepared as to preserve their natural shape and appearance and imported in the interest of science, *Held* to be stuffed birds, not suitable for millinery ornaments, and entitled to free entry under paragraph 493, tariff act of 1897.—G. A. 5655 (T. D. 25234) and Morimura *v.* United States (T. D. 25872) cited.

United States General Appraisers, New York, April 1, 1907.

In the matter of protest 229825 of Outram Bangs against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The collector assessed duty at the rate of 15 per cent ad valorem under the provisions of paragraph 425 of the tariff act of 1897 on certain bird skins, and the importer claims that they should have been admitted to free entry under paragraph 493 which reads:

Birds, stuffed, not suitable for millinery ornaments.

The evidence in the case shows that the importer is a scientific man who studies and collects birds and is also assistant curator in the Museum of Comparative Zoology at Cambridge; that he has a large private collection of stuffed birds principally from South America and Central America; that from each importation he selects such specimens as he desires for his private collection and gives the remainder to the National Museum at Washington, the museum at Cambridge, and the American museum at New York, and that he has never sold a single specimen. In minute detail the record shows the treatment of the birds from the time that they are shot to the time of exportation to the United States, and it is only from the trend of the cross-examination of the importer and the witness called in his behalf by counsel for the Government that we may infer that the Government's contention is that the birds are not "stuffed" within the meaning of paragraph 493. It is shown that immediately upon being killed the birds are skinned and subsequently stuffed with cotton or tow, but are not wired or "set up" as is done with

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birds prepared for exhibition purposes. Nevertheless the birds, as shown by the samples, are so prepared as to preserve their natural shape and appearance.

The witness Frazar, a taxidermist of eighteen years' experience, after examining the samples, classed them as stuffed birds and not such as are generally used for millinery purposes.

In G. A. 5655 (T. D. 25234) the Board held that the young of domestic fowl, chicks, and ducklings, crudely stuffed with cotton and wired, used in trimming candy boxes and trees, were not entitled to free entry as stuffed birds, but subject to duty as toys. On appeal, however, the United States circuit court reversed the Board and held them to be stuffed birds as claimed by the importer (T. D. 25872). This conclusion of the court was acquiesced in by the Government. In that case the articles were merely merchandise, whereas in the case at bar, the birds are unquestionably imported in the interest of science, and since it appears that the skins are fully preserved and that the great majority of them are never further treated, we find them to be stuffed birds not suitable for millinery purposes and hold them to be entitled to free entry.

The protest is sustained and the decision of the collector reversed.

(T. D. 28050.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 14845.—Sheep Dip.—Protest 198519 of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1, March 26, 1907. Opinion by Lunt, G. A.

So-called sheep wash, classified as a coal-tar preparation under paragraph 15, tariff act of 1897, was claimed to be free of duty under paragraph 657 as fit for use only as a sheep dip. Protest overruled on the authority of Abstract 11579 (T. D. 27893) and T. D. 27825.

No. 14846.—Pins—Jewelry.—Protest 70853*f* of Hamburger & Co., protest 209261 of R. H. Macy & Co., and protests 48102*f*, etc., of L. Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 26, 1907. Opinions by Sharretts, G. A.

The protests related to pins and other articles classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable as manufactures of the component material of chief value. This contention was sustained as to certain pins. Abstract 5635 (T. D. 26248) and G. A. 6376 (T. D. 27890) followed.

No. 14847.—Spangled Articles.—Protests 139602, etc., of L. Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 26, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified under paragraph 408, tariff act of 1897, relating to spangled articles.

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No. 14848.—APPLIQUÉED ARTICLES—SPANGLED ARTICLES.—Protest 225180 of H. Hummel & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 26, 1907. Opinion by Sharretts, G. A.

The merchandise was held to have been properly classified, in part as appliquéed goods under paragraph 390, tariff act of 1897, and in part as spangled articles under paragraph 408.

No. 14849.—IMITATION PARCHMENT PAPER.—Protest 217477 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, March 26, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6232 (T. D. 26918), relating to imitation parchment paper.

No. 14850.—LITHOGRAPHIC POST CARDS.—Protest 230125 of W. G. MacFarlane against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 2, March 26, 1907. Opinion by Fischer, G. A.

The case related to pictorial post cards claimed to be dutiable as lithographic prints under paragraph 400, tariff act of 1897. Protest sustained as to a portion of the importation on the authority of G. A. 6369 (T. D. 27359).

No. 14851.—TRIMMED HATS.—Protest 227662 of R. L. Cochran Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinion by Howell, G. A.

A portion of the goods was held dutiable as trimmed hats under paragraph 409, tariff act of 1897, as claimed by the importers.

No. 14852.—SILK FABRICS.—Protest 215474 of Stern & Stern against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinion by Howell, G. A.

The protest related to silk fabrics, which were held to have been properly classified under paragraph 387, tariff act of 1897, as weighing less than one-third of 1 ounce per square yard.

No. 14853.—FEATHERSTITCH BRAIDS.—Protests 225351, etc., of Calhoun, Robbins & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 14854.—RENAISSANCE ARTICLES.—Protests 229045, etc., of Weil Brothers & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6386 (T. D. 27441), relating to Renaissance articles.

No. 14855.—SILK VEILINGS.—Protests 229447, etc., of S. Oppenheimer & Levy against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinion by Howell, G. A.

The protests related to goods measuring 45 centimeters in width, which the Board held to have been properly classified as silk veilings under paragraph 390, tariff act of 1897.

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No. 14856.—LACE WEARING APPAREL.—Protests 229563, etc., of H. S. Beer *et al.* and protests 230610, etc., of Groetzinger Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinions by Howell, G. A.

Protests overruled on the authority of G. A. 5866 (T. D. 25844) and Goldenberg *v.* United States (T. D. 27894), relating to lace wearing apparel.

No. 14857.—DAMAGE—NONIMPORTATION—DESTRUCTION OF MACARONI.—Protest 228203 of A. Marono against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, March 26, 1907.

WAITE, *General Appraiser:* The facts in this case are as follows: The importer asks for remission of duty upon 82 boxes of macaroni out of an importation of 2,700 boxes upon the theory of constructive nonimportation. He states his case in the protest as follows:

The macaroni shipped in said 82 boxes, by coming into contact with sea water on the voyage, was in such a condition on arrival in this country that it had completely lost its identity as macaroni, and was merely an unsightly mass of sea water and dough; consequently, the 82 boxes were abandoned by me to the underwriters, and were never received by me. My reason for objecting to your decision to assess duties on the contents of the 82 boxes, is that the macaroni was so injured from contact with sea water as to become a total loss, and to have had no commercial value whatever at the time it was landed on the dock.

In the later context of the protest, however, the claim is apparently narrowed to 62 boxes respecting which the appraiser concedes the total destruction of a portion of the contents.

That officer's report is to the following effect: Of the said 82 boxes, the contents of 25 boxes were entirely worthless; and 50 per cent of the contents of 14 boxes and 25 per cent of the contents of 23 boxes were likewise worthless, the damage in each case being caused by sea water. The remaining 20 boxes are reported not damaged. In a supplementary report the appraiser emphasizes the fact that the percentages mentioned do not represent, respectively, 50 per cent and 25 per cent damage to the entire contents of the boxes but the practical destruction of those proportions of their contents.

No other evidence of the condition of the merchandise has been produced before the Board, but in view of the appraiser's report, and the probable effect of quantities of sea water upon macaroni, we feel justified in finding that there was a total destruction of the merchandise, for all practical purposes, to the extent mentioned by him, and that the facts thus present a case of nonimportation under the doctrine of Lawder *v.* Stone (187 U. S., 281), rather than one of damage for which allowance is prohibited by section 23 of the customs administrative act of June 10, 1890. So far as the facts in the present case differentiate it from Lawder *v.* Stone they are shown not to remove it from the rule there declared by later decisions applying the Supreme Court's decision. Courtin *v.* United States (143 Fed. Rep., 551; T. D. 26998); Villari *v.* United States (147 Fed. Rep., 766; T. D. 27396); Stone *v.* Shallus (143 Fed. Rep., 486; T. D. 27133).

It is held accordingly that duty upon the goods thus reported destroyed by the appraiser was erroneously collected and the protest is sustained to this extent with a reversal of the collector's decision.

No. 14858.—PROTESTS ABANDONED.—Protest 233269 of Lehn & Fink and protest 234776 of Ying Chong against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 26, 1907. Opinions by Lunt, G. A.

Protests abandoned; overruled.

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No. 14859.—PROTESTS ABANDONED.—Protests 113832, etc., of Veit, Son & Co. Before Board 2. Opinion by Howell, G. A.

Same as No. 14858 (*supra*).

No. 14860.—PROTESTS UNSUPPORTED.—Protest 229394 of D. S. Hesse & Bro., protests 203614, etc., of A. Hilbert *et al.*, protests 213906, etc., of Kaufmann, Aron & Warshauer, and protests 983 *h*, etc., and 201531 of Samuel Schiff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 26, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 14861.—PROTEST UNSUPPORTED.—Protest 225714 of J. H. Lichtenstein & Co. Opinion by Fischer, G. A.

Same as No. 14860 (*supra*).

No. 14862.—PROTESTS UNSUPPORTED.—Protests 219226, etc., of Pietro Caragliano *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1. Opinion by McClelland, G. A.

Same as No. 14860 (*supra*).

No. 14863.—SPANGLED GALLOONS.—Protest 199717 of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 28, 1907. Opinion by Sharretts, G. A.

The goods consisted of galloons, which were held to have been properly classified under paragraph 408, tariff act of 1897, as spangled articles.

No. 14864.—TOY JEWELRY.—Protest 212635 of M. D. Levy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 28, 1907. Opinion by Sharretts, G. A.

Toy necklaces and bracelets, which were classified as jewelry under paragraph 434, tariff act of 1897, were held dutiable as toys under paragraph 418, as claimed by the importers. G. A. 6297 (T. D. 27156) followed.

No. 14865.—RUBBER SPONGES.—Protests 225640, etc., of Julius Lehmann against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 28, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6516 (T. D. 27843), relating to rubber sponges.

No. 14866.—GLASS TUBING.—Protest 203804–21340 of Heinz-Roensch Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 28, 1907. Opinion by Sharretts, G. A.

The protest related to tubing, which was held dutiable as manufactures of glass under paragraph 112, tariff act of 1897, as claimed by the importers. G. A. 6533 (T. D. 27884) followed.

No. 14867.—ALIZARIN ASSISTANT.—Protest 227254 of A. Klipstein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 28, 1907. Opinion by McClelland, G. A.

Assessment affirmed on the authority of Abstract 14469 (T. D. 27937), relating to alizarin assistant.

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No. 14868.—Pictorial Post Cards.—Protest 223346 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 28, 1907. Opinion by Fischer, G. A.

As claimed by the importers, pictorial post cards were held dutiable as lithographic prints under paragraph 400, tariff act of 1897. The protest was held to have been filed by authorized parties.

No. 14869.—Mica Waste.—Protest 226912 of National Gum and Mica Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 28, 1907.

The article in controversy, which was classified as rough trimmed mica under paragraph 184, tariff act of 1897, was claimed to be dutiable under paragraph 468 as waste. Protest sustained.

Fischer, *General Appraiser:* * * * The testimony in this case shows that the mercandise is the scrap or waste mica thrown on the dumps at the mines; that it can not be used for the purposes for which merchantable mica is employed, and that it is of little value and is used only to be ground into a fine powder for lubricating purposes. The testimony taken in G. A. 4832 (T. D. 22691) showed that there is such a thing as waste mica, and that it is the material thrown on the dumps at the mines. In Myers *v.* United States (110 Fed. Rep., 940), which was an appeal from said G. A. 4832, Judge Coxe said:

> The material called waste at the mica mines is refuse thrown out on the dumps, having little value and being incapable of use for any of the purposes for which mica is used.

The testimony herein shows that the article is of the precise character as that defined as waste in the opinion quoted above, and in accordance therewith we hold that the material in question is dutiable as waste, not specially provided for.

No. 14870.—Embroidered Hosiery.—Protests 225235, etc., of Fredk. Vietor & Achelis *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 28, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6365 (T. D. 27344), relating to embroidered hosiery.

No. 14871.—Olives in Kegs.—Protest 202605 of E. La Montagne & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 28, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Lomba *v.* United States (T. D. 27707), relating to olives in kegs.

No. 14872.—Olives in Kegs.—Protest 199754 of H. C. Newcomb against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14871 (*supra*).

No. 14873.—Olives in Kegs.—Protests 164193, etc., of Antonio Rosa *et al.* against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 14871 (*supra*).

No. 14874.—Antipasto.—Protest 226919 of Basila & Calandra against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 28, 1907. Opinion by Waite, G. A.

Protest sustained on the authority of G. A. 6535 (T. D. 27886), relating to antipasto.

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No. 14875.—Dutiable Weight of Tobacco.—Protests 192179, etc., of Wm. Tegge & Co. *et al.* against the assessment of duty by the collector of customs at the port of Detroit. Before Board 3, March 28, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14876.—Dutiable Weight of Tobacco.—Protests 225308, etc., of Ron Fernandez Cigar Company against the assessment of duty by the collector of customs at the port of Duluth.

Same as No. 14875 (*supra*).

No. 14877.—Dutiable Weight of Tobacco.—Protests 230194, etc., of Charles Soby against the assessment of duty by the collector of customs at the port of Hartford.

Same as No. 14875 (*supra*).

No. 14878.—Dutiable Weight of Tobacco.—Protests 188805, etc., of Hochstein Leaf Tobacco Company *et al.* against the assessment of duty by the collector of customs at the port of Milwaukee.

Same as No. 14875 (*supra*).

No. 14879.—Dutiable Weight of Tobacco.—Protest 229200 of Empire Leaf Tobacco Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 14875 (*supra*).

No. 14880.—Dutiable Weight of Tobacco.—Protests 226400, etc., of Bentley & Euker against the assessment of duty by the collector of customs at the port of Richmond.

Same as No. 14875 (*supra*).

No. 14881.—Cotton Tares—Waste.—Protest 222640 of Maltus & Ware against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 28, 1907. Opinion by Somerville, G. A.

The Board held so-called cotton tares to have been properly classified as waste under paragraph 463, tariff act of 1897. Note G. A. 5078 (T. D. 23520).

No. 14882.—Protest Abandoned.—Protest 203953 of M. Sanchez & Co. against the assessment of duty by the collector of customs at the port of Chicago. March 28, 1907.

Same as No. 14858 (*supra*).

No. 14883.—Protests Unsupported.—Protests 198533, etc., of H. S. de Sonhamie *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 28, 1907. Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 14884.—Protests Unsupported.—Protests 213485, etc., of C. Ferri & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14883 (*supra*).

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No. 14885.—PROTEST UNSUPPORTED.—Protest 226910 of C. Wilkinson's Sons. Opinion by Somerville, G. A.

Same as No. 14883 (*supra*).

No. 14886.—PROTESTS UNSUPPORTED.—Protests 226318, etc., of John V. A. Cattus. Opinion by Hay, G. A.

Same as No. 14883 (*supra*).

No. 14887.—PROTEST UNSUPPORTED.—Protest 221899 of O. G. Hempstead & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, March 28, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 14888.—PROTEST UNSUPPORTED.—Protest 224886 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Opinion by Sharretts, G. A.

Same as No. 14887 (*supra*).

TREASURY DEARTMENT, *April 3, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 28051.)

Castings.

BROMLEY *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania, February 28, 1907. No 87 (suit 1773).

1. FINISHED CASTINGS—MACHINERY PARTS.

The provision for iron "castings" in paragraph 148, tariff act of 1897, does not include articles which have been advanced in condition by work bestowed on them after they were cast; and cast-iron machinery parts which, after being cast have had holes drilled in them and have been chiseled to fit them for their intended use, are not included within said provision, but are dutiable under paragraph 193 as manufactures of metal.

2. APPEALS—FURTHER EVIDENCE—CUMULATIVE EVIDENCE.

All the evidence which importers may have and can be produced should be laid before the Board of General Appraisers, and upon appeal to the circuit court little weight should be given additional evidence which is cumulative and could easily have been submitted to the Board.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 8503 (T. D. 26790), affirmed the assessment of duty by the collector of customs at the port of Philadelphia on importations by John Bromley & Sons. The opinion filed by the Board reads as follows:

FISCHER, *General Appraiser:* The merchandise consists of parts for lace curtain machines upon which duty was assessed at the rate of 45 per cent ad valorem

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under the provisions of paragraph 193 of the tariff act of 1897, and which are claimed to be dutiable properly at eight-tenths of a cent per pound under paragraph 148 or 149 of said act.

We find from the testimony of the importers' witnesses that the articles are of cast iron, and that after they were cast holes were drilled in them and they were to some extent chiseled to fit them for the machines into which they were to be incorporated. The question thus presented for our consideration has been many times decided adversely to the contention of the importers. Note G. A. 1410 (T. D. 12814) and G. A. 5397 (T. D. 24604). On motion of the counsel for the Government the testimony taken in the case passed on in G. A. 6070 (T. D. 26478) was made a part of the record in the present case, and it is to the effect that the word "castings" in the trade does not include articles made by the casting process which have been advanced in condition by work bestowed on them after they were cast.

Following the decisions mentioned above, we overrule the protests and affirm the decision of the collector in each case.

Hatch, Keener & Clute (*Walter F. Welch* of counsel), for the importers.

Jasper Yeates Brinton, assistant United States attorney, for the United States.

HOLLAND, *District Judge:* The castings in question were assessed with a duty by the collector of this port under paragraph 193 of the tariff act of 1897. The importer claimed they were dutiable as castings under paragraph 148. The Board of General Appraisers sustained the collector.

On February 14, 1905, the appraiser reported as to this importation as follows:

I beg to state that the goods are parts of lace curtain machines, drilled, bored, planed, fitted, and finished beyond the condition of castings and were properly returned for classification with and as part of the machines of which they form integral parts, and in the values of which their values are included.

Paragraph 193 referred to is as follows:

Articles or wares not specially provided for in this Act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

Paragraph 148, under which the importer claims the importation should be classified, is as follows:

Cast iron vessels, plates, stove-plates, andirons, sad-irons, tailors' irons, hatters' irons, and castings of iron, not specially provided for in this Act, eight-tenths of one cent per pound.

The evidence in this case shows that the importation is an "article * * * composed wholly * * * of iron partly * * * manufactured," within the meaning of paragraph 193, as they are parts of the lace-curtain machines finished for use in the erection of these machines in the mill.

The decision of the Board of General Appraisers, rendered October 11, 1905, included the following finding:

We find from the testimony of the importers' witnesses that the articles are of cast iron and that, after they were cast, holes were drilled in them and they were to some extent chiseled to fit them for the machines into which they were to be incorporated. The question thus presented for our consideration has been many times decided adversely to the contention of the importers. Note G. A. 1410 (T. D. 12814) and G. A. 5397 (T. D. 24604). On motion of the counsel for the Government, the testimony taken in the case passed on in G. A. 6070 (T. D. 26478) was made a part of the record in the present case, and it is to the effect that the word "castings" in the trade does not include articles made by the casting process which have been advanced in condition by work bestowed on them after they were cast.

The evidence submitted to the Board sustains this finding. The testimony taken before Byron S. Waite, United States General Appraiser, before whom the matter was referred by the court to take further testimony, as provided under section 15 of the customs administrative act of June 10, 1890, is simply cumulative and entirely to the

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same facts upon which evidence was taken before the Appraiser and the Board of United States General Appraisers. There is nothing in the testimony different from that already before the Board.

It was intended that the customs administrative act should provide the importer with a convenient and expeditious method of disposing of his controversies in the payment of duties on importations, and the Board of General Appraisers is the tribunal before whom the importer is required to submit his case. All the evidence he may have and can produce should be laid before this tribunal for its consideration in determining the right in each particular controversy, and, upon an appeal to the circuit court, little weight should be given to additional cumulative evidence which could easily have been submitted to the Board of General Appraisers for its consideration.

The decision of the Board of General Appraisers is affirmed.

NOTE.—An appeal from the decision herein has been taken to the circuit court of appeals, third district.

(T. D. 28052.)

Preserved pineapples.

DUDLEY *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 228 (suit 3705).

PINEAPPLES PRESERVED IN OWN JUICE—FRUIT IN SUGAR.

Pineapples preserved in cans in their own juice, with added sugar ranging in quantity from 2.28 to 8.82 per cent, are dutiable under paragraph 263, tariff act of 1897, as "pineapples preserved in their own juice," and not under the provision in the same paragraph for fruit preserved in sugar.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see 148 Federal Reporter, 333 (T. D. 27516), affirming a decision of the Board of United States General Appraisers, G. A. 5787 (T. D. 25577), which had affirmed the assessment of duty by the collector of customs at the port of New York on importations by U. H. Dudley & Co.

The articles in controversy consist of Singapore pineapples in tin cans. They were classified as "fruits preserved in sugar" under paragraph 263, tariff act of 1897, and were claimed by the importers to be dutiable under the provision in the same paragraph for "pineapples preserved in their own juice." The Board found that cane sugar had been added in the preserving process, in quantities varying from 2.28 to 8.82 per cent, and affirmed the assessment of duty, on the basis of the conclusions stated as follows:

SOMERVILLE, *General Appraiser:* We are disposed, therefore, after due consideration, to adopt the following principles for the classification of goods of this kind:

1. Where the chemical analysis shows not over 14 per cent of total sugar, including both invert and cane sugar, and the chemist expresses no expert opinion on the subject, the goods are *prima facie* subject to classification as pineapples preserved in their own juice and not in sugar, and are therefore dutiable at 25 per cent ad valorem under the last clause of said paragraph 263.

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2. Where the percentage of total sugars runs over 14 per cent, and there is no expert opinion expressed by the chemist as to whether or not cane sugar has been extrinsically added, the probability is nevertheless that such cane sugar has been added, and the goods are accordingly pineapples preserved in sugar, and are dutiable at 35 per cent ad valorem and 1 cent per pound under said paragraph 263.

The Board's decision was affirmed by the circuit court as above stated.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

PER CURIAM: Since the decision of this cause at circuit, our opinion has been filed in United States *v.* Johnson (T. D. 27830), January 8, 1907, in which we had before us pineapples similarly preserved, except that the cans contained a trifle less sugar. We are unable to distinguish between the two causes, and therefore the decision of the circuit court is reversed.

(T. D. 28053.)

Mushrooms.

CHOY CHONG WOH & CO. *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 225 (suit 4165).

DRIED MUSHROOMS—MUSHROOMS PRESERVED IN TINS.

Mushrooms which have been dried in order to preserve them and have then been placed in hermetically sealed tins are dutiable under paragraph 241, tariff act of 1897, as "mushrooms, prepared or preserved, in tins," rather than under paragraph 257 as "vegetables in their natural state."

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

Appeal from a judgment of the United States circuit court for the southern district of New York, affirming a decision of the Board of United States General Appraisers, Abstract 9606 (T. D. 26958), which affirmed the decision of the collector. The opinion of the court below is reported in T. D. 27500.

Everit Brown, for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

PER CURIAM: The articles in question are mushrooms inclosed in tin boxes holding from 30 to 45 pounds. They were assessed for duty under paragraph 257 of the act of July 24, 1897, at 25 per cent ad valorem as "vegetables in their natural state, not specially provided for." The importers, appealing from this classification and assessment, claim that the mushrooms in this condition are dutiable at 2½ cents per pound, under the provision of paragraph 241 of said act for "beans, peas, and mushrooms prepared or preserved in tins, jars, bottles or similar packages." The uncontradicted testimony is to the effect that these mushrooms have been sun dried or kiln dried, or both, in order to preserve them, and have then been placed in hermetically sealed tins, inclosed in outside wooden boxes to protect the tin. There can be no question, therefore, that these mushrooms are "prepared or preserved in tins," and being thus specially provided for by paragraph 241, are excluded from the provisions of paragraph 257.

The judgment is reversed.

NOTE.—The Government in T. D. 28088 acquiesced in the foregoing decision.

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(T. D. 28054.)

Mushrooms.

ZANMATI *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 226 (suit 4176).

1. MUSHROOMS SLICED AND DRIED—VEGETABLES IN THEIR NATURAL STATE.

Mushrooms which have been cleaned, sliced, and dried in the sun, the slicing being done to facilitate the drying, are not dutiable as "vegetables prepared or preserved," under paragraph 241, tariff act of 1897, but as "vegetables in their natural state," under paragraph 257.

2. "NATURAL STATE"—SLICING AND DRYING.

The process of slicing mushrooms so as to facilitate their drying and of drying them in the sun, does not so change the nature of the articles as to remove them from a provision for vegetables in their "natural state."

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see T. D. 27499, affirming a decision of the Board of United States General Appraisers, G. A. 6258 (T. D. 26968), which had affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by A. Zanmati & Co.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here on appeal from a judgment of the United States circuit court for the southern district of New York, affirming the decision of the Board of General Appraisers which affirmed the action of the collector. The opinion of the court below is reported in T. D. 27499.

PER CURIAM: The merchandise involved in this appeal consists of mushrooms, cleaned, sliced, dried in the sun, and imported in barrels, which were assessed for duty under the provisions of paragraph 241 of the tariff act of 1897, at 40 per cent ad valorem as "vegetables prepared or preserved * * * not specially provided for," and claimed by the importers as dutiable at 25 per cent ad valorem, under the provisions of section 257 of said act, as "vegetables in their natural state, not specially provided for." The Board of General Appraisers upon an examination of the samples found that the mushrooms were sliced to facilitate the drying, and the evidence showed that this slicing was done when the mushrooms were cleaned.

This importation is to be distinguished from that considered in Choy Chong Woh & Co. *v.* United States (T. D. 28053), where we held that, as mushrooms subjected to a drying process and preserved in tins so sealed as to be air-tight were dutiable *eo nomine* as mushrooms "prepared or preserved in tins," they were not dutiable as "vegetables in their natural state, not specially provided for." And this importation is not within the reasoning of this court applied in Leaycraft *v.* United States (130 Fed. Rep., 106; T. D. 25221), where we held that the starch obtained from the arrowroot plant by mashing the tubers, soaking the pulp in water and thus dissolving it out, allowing it to settle, cleansing it, and finally drying it, was not free as "arrowroot in its natural state" but was dutiable as "starch" *eo nomine* under paragraph 285 of the tariff act of 1897. Here, the mushrooms have not been subjected to any process whereby their condition is changed or advanced from a state of nature.

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It has frequently been held that mere evaporation of the juice or sap in a vegetable product by the heat of the sun does not change the nature of the product or remove it from its natural state. Frazee *v.* Moffitt (18 Fed. Rep., 584); Kraut *v.* United States (139 Fed. Rep., 94; T. D. 26161); Sonn *v.* Magone (159 U. S., 417). It would seem to follow that the slicing of the mushrooms solely in order to facilitate the natural drying operation should not take them out of the category of "vegetables in their natural state."

The judgment is reversed.

NOTE.—The Government in T. D. 28091 acquiesced in the foregoing decision.

(T. D. 28055.)

Castings.

LEHIGH MANUFACTURING COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania. February 28, 1907. No. 50 (suit 1772).

1. FINISHED CASTINGS—MACHINERY PARTS.

Cast-iron machinery parts, which have been drilled, bored, planed, fitted, and finished, are not dutiable as "castings" under paragraph 148, tariff act of 1897, but as manufactures of metal under paragraph 193.

2. APPEAL—FAILURE TO OFFER EVIDENCE BEFORE GENERAL APPRAISERS.

The failure of an importer to introduce any evidence before the Board of General Appraisers, or on appeal from the Board's decision, is not reason for dismissing his appeal. If he desires to submit his case on the facts certified to the Board by the collector, the case may properly be heard without any further evidence.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 7033 (T. D. 26516), affirmed the assessment of duty by the collector of customs at the port of Philadelphia. The opinion filed by the Board reads as follows:

FISCHER, *General Appraiser:* These protests claim that certain machinery and parts of machinery upon which duty was assessed at the rate of 45 per cent ad valorem under the provisions of paragraph 193 of the tariff act of 1897 are dutiable properly at eight-tenths cent per pound under paragraph 148 of said act as castings.

After several adjournments granted at the request of the importers, these cases were submitted for decision without the introduction of any evidence September 16, 1904, and sixty days were then allowed the importers to procure and furnish certain affidavits from abroad. This time, though subsequently extended, has expired; and no action has been taken by the importers before the Board. In his letter of transmission the collector states that the goods are "parts of a lace curtain machine, drilled, bored, planed, fitted, and finished beyond the condition or appearance of castings," and that they were returned and classified as "part of the machine of which they form integral parts and in the value of which their value is included." It is evident from this description, which is not contradicted, that the claim of the importers is wholly untenable. In G. A. 1410 (T. D. 12814), and again in G. A. 5397 (T. D. 24604), the Board held that so-called castings which had been subjected to a finishing process subsequent to being cast, were no longer classifiable as castings, but fell within the terms of paragraph 193 as articles of metal not specially provided for.

Following these decisions, we overrule the protests and affirm the decision of the collector in each case.

Hatch, Keener & Clute (*Walter F. Welch* of counsel), for the importers.

Jasper Yeates Brinton, assistant United States attorney, for the United States.

HOLLAND, *District Judge:* It is urged by the Government in this case that the court should dismiss the appeal because no evidence was taken at all before the Board of General Appraisers, or on the appeal. The importer, however, insists that sufficient

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facts appear in the certificate of the collector to enable the Board and the court to pass upon the questions involved, and he is entitled to be heard. In this view we think the importer is right. If he concludes that his case can be properly heard without any evidence, there is nothing in the law to prevent him from submitting it in that form. In this case, however, the record shows that the classification of the collector was correct. It was approved by the Board of General Appraisers, and its findings are affirmed.

NOTE.—No appeal was taken in this case.

(T. D. 28056.)

Sugar.

FRANKLIN SUGAR REFINING COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania. March 22, 1907. No. 63 (suit 1809).

1. SUGAR ABOVE NO. 16 DUTCH STANDARD—BEET SUGAR.

The provision in paragraph 209, tariff act of 1897, for "sugar above number sixteen Dutch standard in color," is not limited to cane sugar, but refers also to such raw beet sugar as meets the description of the statute.

2. ESTOPPEL—LACHES OF CUSTOMS OFFICERS.

The failure of customs officers to forward an importer's protests to the Board of General Appraisers without undue delay or to preserve the official samples does not constitute a sufficient reason for reversing the assessment of duty.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see Abstract 9954 (T. D. 27087), affirming the assessment of duty by the collector of customs at the port of Philadelphia.

William M. Stewart, jr., for the importers.

Jasper Yeates Brinton, assistant United States attorney, for the United States.

MCPHERSON, *District Judge:* This petition seeks to review the decision of the Board of General Appraisers sustaining the collector of the port of Philadelphia in classifying 3,500 bags of beet sugar, imported by the Franklin Sugar Refining Company, as below No. 16 Dutch standard in color, and imposing duty accordingly. These bags were part of five cargoes brought to the port in June and July, 1898, the details being as follows: One thousand bags out of 40,148 bags, carried by the *Strathtay;* 1,000 bags out of 60,000 bags, carried by the *Brasilian*; 500 bags out of 27,500 bags, carried by the *St. George;* 500 bags out of 19,993 bags, carried by the *Sophie Rickmers;* 500 bags out of 36,728 bags, carried by the *Planet Mercury*.

The importer's direction to the shippers was that all the sugar must be under No. 16 Dutch standard in color, and the rest of the five cargoes conformed to this direction. The bags in question, however, were reported by the Government officials to be above this standard, and accordingly the higher rate of duty prescribed by paragraph 209 of the tariff act of 1897 was imposed. That paragraph is in part as follows (2 Sup. Rev. Stat., 662):

Sugars not above number sixteen Dutch standard in color, testing by the polariscope not above seventy-five degrees, ninety-five one-hundredths of one cent per pound, and for every additional degree shown by the polariscopic test, thirty-five one-thousandths of one cent per pound additional, and fractions of a degree in proportion; and on sugar above number sixteen Dutch standard in color, and on all sugar which has gone through a process of refining, one cent and ninety-five one-hundredths of one cent per pound.

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This paragraph requires all imported sugar to be first subjected to the test of visual inspection, in order that its color may be compared with the color known as No. 16 Dutch standard. If the color is lighter or higher than this standard—or if the sugar has gone through a process of refining, an alternative which need not now be considered—a duty of 1 cent and ninety-five hundredths of a cent per pound is to be imposed. If the sugar is of the same color as the standard, or darker or lower, the polariscope test is to be applied and lower rates of duty are to be imposed. The present dispute is therefore essentially a dispute of fact; if the bags in question were below the standard color, the importer has been charged too much; if they were above the standard, the collector and the Board were right and their action should stand.

The opinion of the Board affirming the classification of the collector is as follows (Somerville and Hay, Appraisers):

The question in these cases is whether the sugar under consideration is below or above No. 16 Dutch standard. The sugar was imported in the year 1898. The hearing took place at Philadelphia, December 5, 1905.

The testimony shows that the examination of the samples made at the time the sugar was imported showed that they were above 16 Dutch standard, and the entries were liquidated by the collector upon this basis. The importers introduced samples which had been in their possession between seven and eight years.

The evidence shows that beat sugar changes its color and becomes darker with the lapse of time. While the evidence shows that these samples of the importers were under 16 Dutch standard, it does not in our opinion justify us in authorizing the collector to assess duty based upon the condition of the sugar at the time of the hearing, for the reason, as we have said, that it had undergone a change. It would be a dangerous practice to allow cases to be continued for so long a time, and to follow the practice insisted on by the importers. The protests are all overruled, and the decision of the collector affirmed in each case.

It will be observed, therefore, that in this proceeding the importer starts with the presumption against his contention. Two administrative tribunals, each charged with the duty of determining whether the sugar in question was above or below the standard, have decided against him, and the Board of General Appraisers has so decided after the oral hearing of several witnesses upon one side and the other. The presumption of correctness which thus arises was attacked by the importer in the circuit court, and witnesses were called for this purpose, to whom the Government replied by taking further testimony in support of the collector's classification. The whole case from the beginning is therefore now before the court, and the final result depends upon the question of fact to which reference has already been made. I shall not discuss the evidence in detail; it has all been carefully examined and considered in the light of the able argument presented on behalf of the importer; but it leads me to the conclusion that the company has not made out its case, and that the action of the collector and of the Board should not be disturbed.

It is unfortunate that, apparently by some misunderstanding, the protest of the importer was not transmitted to the Board until September, 1905. So far as the evidence enables me to judge, the delay was neither intentional nor negligent on the part of the Government, but was due to a mistaken belief that the protest raised a different question—one that was already in the court for decision—and therefore that the present dispute might, without harm to anyone concerned, await the final determination of the suit already pending. During the interval, however, the samples taken by the Government from the bags in question have disappeared; and, while the importer produced the two samples which were averred to have been taken by its own agent from one of the cargoes, their value in 1906, when the hearing before the Board took place, was much impaired by the lapse of time, which affects the color of sugar; and no samples at all were produced from the other four cargoes. At the argument, the importer laid a good deal of stress upon the alleged negligence of the Government in delaying the hearing and in failing to preserve the official samples; but, even if the

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delay had been shown to be the fault of the Government, and the failure to preserve the samples had appeared to be due to culpable neglect, this in itself would not be decisive in favor of the importer's contention. No doubt, if the Government appeared to be at fault in these respects, the court would more readily incline toward the importer's view, and would be more easily persuaded that the presumption of official correctness had been overcome; but where, as here, the testimony as a whole shows with sufficient clearness that the classification was right, a fault in procedure can not be allowed to destroy the Government's right to exact the proper duty.

It was also contended that the purpose of Congress in imposing a duty of 1 cent and ninety-five hundredths of a cent upon sugars above No. 16 Dutch standard was to tax sugars that had undergone a process of refining or, at all events, were capable of being used commercially without undergoing that process. It was therefore urged upon the court that since raw beet sugar, such as the importation in question, was so offensive to the senses that it could not be used until it had been refined, the court should so construe the second clause of paragraph 209 as to exclude raw beet sugar altogether and to confine the phrase "sugar above No. 16 Dutch standard in color" to raw sugar that is made from cane. In my opinion, the answer to this argument is that the clause in question is without the slightest ambiguity. It imposes the duty referred to upon all sugar above No. 16 Dutch standard in color, making no exception whatever, and therefore it is beyond the power of the court to limit the clear statutory provision by the process of construction. No doubt it is perfectly proper for a court so to construe an ambiguous provision in a statute as to reach, if possible, the true meaning of the lawmaking body; but where the language is incapable of more than one construction and does not lead to an absurd result, all authorities agree that a court has no power to vary the meaning by going outside the unambiguous language adopted by the lawmaking power. If Congress had intended to exclude raw beet sugars, they would, I think, have said so. At all events, I am bound to assume that they would have made this exception if they had desired so to do, and it is therefore my duty, as I conceive it, to carry out the plainly expressed will of the National legislature.

The decision of the Board of General Appraisers is affirmed.

(T. D. 28057.)

Action for duties.

TIFFANY *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. February 4, 1907. No. 22.

ACTION FOR DUTIES—PAYMENT—SUSPENSION OF TRIAL.

Where an importer has been sued in the circuit court for unpaid duties, the court has ample power to suspend the trial until the importer, by the payment of the duties assessed, may put himself in position to try the question of classification before the Board of General Appraisers.

IN ERROR to the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For former proceedings in this case see United States *v.* Tiffany (137 Fed. Rep., 971; T. D. 26318; reversed, T. D. 27754), relating to an importation at the port of New York by Tiffany & Co. In the former proceedings it was held that, when an importer is sued for unpaid duties, he can not defend on the ground that the duties were improperly assessed; that under section 12, customs administrative act of 1890, the collector's decision is final unless reversed on review by the Board of General Appraisers or the courts, in the manner prescribed in said act, and that in order to secure such review the duties should first be paid.

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The present proceedings have arisen on a motion in behalf of the importers for leave to apply to the circuit court for permission to amend the answer to the complaint of the Government in the original action.

Arthur M. King, for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

Before WALLACE, LACOMBE, and COXE, Circuit Judges.

PER CURIAM: The application to serve and file a supplemental and amended answer is denied, because we deem the application unnecessary; as the circuit court has ample power to grant such relief and to suspend the trial until the importer, by payment of the duties assessed, may put itself in position to try the question as to classification before the Board of General Appraisers.

(T. D. 28058.)

Sheep dip.

MOODY *v.* PATTERSON.

U. S. Circuit Court, District of Oregon. March 18, 1907. No. 2888 (suit 1688).

SHEEP DIP—PREPARATIONS HAVING OTHER USES.

As to the provision in paragraph 657, tariff act of 1897, for sheep dips, excepting such as "can be used for other purposes," *Held* that this phraseology excludes, from classification as sheep dip, preparations which in a commercial sense are fit for other purposes than sheep dipping or which are actually used for other purposes, and that Cannon's dip, which is advertised as a sheep and cattle wash, insecticide, disinfectant, and remedy for diseases of domestic animals, is not entitled to classification under said paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see Abstract 3858 (T. D. 25805), affirming the assessment of duty on merchandise imported at the port of Portland, Oreg., by R. E. Moody. These proceedings were brought against I. L. Patterson, collector of customs at said port. Note Shallus *v.* Stone (T. D. 27825).

Ralph E. Moody, for the importer.

W. C. Bristol, United States attorney, for the collector.

WOLVERTON, *District Judge:* On August 22, 1902, the petitioner imported from England 350 drums of coal-tar preparation for sheep dip. This was classified by the collector of customs as a chemical compound under paragraph 3 of the tariff act of 1897, and a duty of 25 per cent ad valorem assessed thereon. The petitioner, not being satisfied with the action of the collector, paid the duty under protest and appealed to the Board of United States General Appraisers. The compound was referred to the United States chemist at New York, who found it to be an "alkaline preparation of mineral oil and coal-tar distillates (phenoloid bodies, etc.), pyridin bases, and some resin compounds; does not contain arsenic compounds."

Upon the testimony submitted, this report of the chemist being considered, the Board of Appraisers found that the merchandise in question was a preparation adapted for use as a sheep dip, as a medicine, and as a disinfectant, and therefore affirmed the survey of the collector of customs. The plaintiff now petitions the court for a review of the findings of the Appraisers, and prays that their judgment in the premises may be reversed. The petitioner claims that the preparation imported is free of duty, and falls within the purview of paragraph 657 of the act of Congress above designated.

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This paragraph comprises "sheep dip, not including compounds or preparations that can be used for other purposes." The question for decision is whether or not this preparation falls within paragraph 3 of the act alluded to, or within the exception as denoted by paragraph 657. It has been determined as to the latter paragraph that the phrase employed thereby, namely, "that can be used for other purposes," refers to a compound fit for other purposes than dipping sheep in the commercial sense, or that people buy and actually use for other purposes. *In re* Hulme, G. A. 4124 (T. D. 19228).

The petitioner insists, in respect of the importation of the compound in question, that if, as compared with its use for other purposes, its chief or predominant use was for sheep dip, then it was not dutiable. Cases are cited by which the rule is determined that, as between two classifications carrying different duties, where the article is adapted to use within the language of either classification, it should bear the duty according to its chief or predominant use, and that that would be so even if the article might be used practically and generally for another purpose suitable to the other classification. Such are the cases of Hartranft *v.* Langfeld (125 U. S., 128) and Meyer *v.* Cadwalader (89 Fed. Rep., 968). In the former the question came up whether the article of importation should be classified under the clause of the act requiring a duty of 50 per cent ad valorem on "all goods, wares, and merchandise not specially enumerated or provided for in this Act, made of silk, or of which silk is the component material of chief value;" or whether it should take the classification under another clause, namely, "hats and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willowsheets, and squares, used for making or ornamenting hats, bonnets, and hoods, composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not specially enumerated or provided for in this Act," upon which merchandise a duty of 20 per cent ad valorem was assessable. It was held that, as the chief or principal use made of the importation was for hat trimmings and not for dress trimmings, although it was commonly used for the latter purpose, it was subject to classification under the latter clause, and to a duty of 20 per cent ad valorem only. The other case cited is of the same nature. But are these cases so in point here as to be controlling? The language employed by paragraph 657 of the present statute, namely, "that can be used for other purposes," would seem to be restrictive rather than general.

Concededly, it could not have the same signification as if it read "used for other purposes;" and it was a condition of the latter character that the courts were considering in the cases cited. The doctrine of those cases is much older than the statute, as the Hartranft case was decided in 1887, and presumably was familiar to Congress when it adopted this later statute. The most natural inference, therefore, is that it was the intendment of Congress that paragraph 657 should bear a more restricted construction than if the general language had been employed. See Swan & Finch Company *v.* United States (113 Fed. Rep., 243), where "common" or "predominant" use is controlled wholly by the condition "fit only for such uses." The paragraph came up for interpretation in the case of Wyman *et al.* *v.* United States, in the circuit court for the eastern district of Missouri (118 Fed. Rep., 202), wherein Adams, district judge, after remarking that he was disposed to approve of the interpretation placed upon the act by the General Appraisers in the case of *In re* Hulme (*supra*), says:

> This interpretation permits the admission of any preparation for sheep dipping free of duty when the preparation is, in the commercial sense, adapted to and usually and generally employed for that purpose only. I take it that any preparation that is so adapted to that use and generally employed for that purpose should be admitted free of duty, even though it incidentally may be used for other purposes. If its main and very general purpose is for sheep dipping, it may be brought in free of duty; but if, as in the case at bar, the article is not only used as a sheep dip, but is a compound adapted to and is extensively used for other purposes, such as those just detailed, it is not an article admissible duty free.

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The testimony in the present case does not show as large use for other purposes as was established in that case, but what is shown in that regard appears from a folder found with the evidence, making announcement as follows: "Cannon's dip (nonpoisonous), sheep dip, and cattle wash, for scab, lice, ticks, and all parasites, disinfectant for destroying all infection and contagion;" and contains instructions for use as a remedy for hoose and tapeworm in calves, and worms in horses, and various diseases of horses and cattle. This suffices to show that the manufactured product was of commercial value for other uses than for dipping sheep. It is adaptable for such other uses, and presumably was actually used in that way. If not, why the advertisement? So that the facts here bring the case within the doctrine of the Hulme case; and, in my opinion, that is as far as it was necessary for the Government to go, notwithstanding the burden of proof was upon it to establish the fact that the article was subject to duty. Much of what Judge Adams has said in Wyman *v.* United States (*supra*) was spoken with reference to the facts of that particular case; and yet, from a careful analysis of his language, it would seem that it was his purpose to approve the doctrine as announced in the Hulme case and not to modify it in any particular.

Holding these views, it follows that the finding and judgment of the Board of Appraisers should be affirmed, and it is so ordered.

(T. D. 28059.)

Burlaps.

CORBITT & MACLEAY COMPANY *v.* UNITED STATES.

U. S. Circuit Court, District of Oregon. March 18, 1907. No. 2371 (suit 1361).

1. BURLAPS—DOUBLE-WARP BAGGING.

   So-called Dundee bagging, made of jute and having a double warp and single weft, *Held* not to be subject to classification as "burlaps" under paragraph 424½, tariff act of 1894.

2. PROTEST—SUFFICIENCY—WRONG CLAIM IN FREE LIST.

   Under section 14, customs administrative act of 1890, requiring that protests shall set forth "distinctly and specifically" the objections of the importers, a protest is insufficient which contends that merchandise is free of duty under one paragraph of the tariff as burlaps, when it should have been classified as free under another paragraph as jute bagging.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which was rendered December 23, 1896, overruled the importers' protest against the assessment of duty by the collector of customs at the port of Portland, Oreg. The opinion filed by the Board reads as follows:

SOMERVILLE, *General Appraiser:* The merchandise covered by the protests is represented by the accompanying samples, and is jute bagging of the kind described in G. A. 3486 (T. D. 17169), and was assessed for duty at 35 per cent ad valorem under paragraph 277, act of August 28, 1894. With the exception of protest 28899 *b*, the protests claim that the goods should be entered free under either paragraph 424½ as burlaps, or under paragraph 392½ as jute bagging. On the authority of said decision of the Board (G. A. 3486), and on that of White *v.* United States (69 Fed. Rep., 93), we sustain the claim that the goods are entitled to free entry as jute bagging under paragraph 392½, and reverse the collector's decision, with instructions to reliquidate the entries accordingly.

This order of reliquidation, however, does not extend to protest 28899 *b*–99 of the Corbitt & Macleay Company, for the reason that the claim there is that the goods are

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burlaps, entitled to free entry under paragraph 424½ of the present tariff. No other claim is made. From the samples before us it is evident that the goods are not burlaps, because the warp is double. See Board decision, G. A. 1129 (T. D. 12357), which was affirmed by the United States circuit court for the southern district of New York, in the case of *In re* White (53 Fed. Rep., 787). As to protest 28899*b*, therefore, the claim of appellants is disallowed, the protest is overruled, and the decision of the collector is affirmed.

Williams, Wood & Linthicum, for the importers.

W. C. Bristol, United States attorney, for the United States.

WOLVERTON, *District Judge:* This is an application for a review of the decision of the United States General Appraisers relative to the duty imposed upon a certain jute cloth imported by the Corbitt & Macleay Company, August 21, 1895. The collector of customs assessed a duty of 35 per cent ad valorem under paragraph 277 of the act of August 28, 1894. The importers made protest as follows:

We claim the same to be burlaps (hop cloth) and is provided for under paragraph 424½, tariff act of August 28, 1894, and entitled to entry free of duty, as the same is known in the market and by common usage as burlaps, and that paragraph 424½ relates to this article particularly as burlaps not otherwise provided for, and that paragraph 277 does not specially provide for this class of goods.

The General Appraisers ruled adversely to the protest, for the reason that the protestants claimed that the fabric imported was burlap, entitled to free entry under paragraph 424½ of the existing tariff act, and the Appraisers found that it was not burlap, because the warp was double.

Two questions are presented for consideration: First, whether the importation should be classed under the tariff act as burlap; and, second, if not, whether it should be admitted free of duty as jute bagging under paragraph 392½. The Appraisers found that the fabric was what is known as "double warp Dundee bagging, commonly invoiced as D. W. bagging;" that it was made of jute, and was double warp in its structure; that it was "not the article known as burlaps, nor was it known as such at or before the 28th day of August, 1894, commercially or otherwise," and that, "so far as the Board is advised, it has never been classed as burlap in customs practice at any port in this country." By a former decision, in the matter of the protest of D. W. MacLeod & Co., G. A. 1129 (T. D. 12357), the Board found and decided—

That the word "burlap" or "burlaps" is a commercial term of American origin, and is understood to mean in the trade a coarse textile fabric composed of flax, hemp, or jute (but more recently of jute only), plain woven in a single weft and single warp, and varies in width from 12 to 216 inches, and in weight from 16 to 20 ounces per yard, according to the uses for which the goods are designed.

This decision was affirmed in the case *In re* White (53 Fed. Rep., 787). The court does not attempt, however, to define the word "burlap" or "burlaps," and it is only in a general way that the decision of the Appraisers in that regard is approved. A reference to a fabric of similar texture is made in the case of McLeod *v.* United States (75 Fed. Rep., 927), wherein the court says:

The articles in question are manufactures of jute, with the single warp and single weft characteristic of burlaps.

This would seem to indicate that the court was of the opinion that burlaps consisted of a single warp and single weft only, thus differentiating them from goods having a double warp and single woof. However this may be, and whatever may be the technical definition of burlaps, and whether the term is properly applicable to the article here under consideration, it is clear from the finding of the Appraisers that it is not known in commerce as burlap, but, on the other hand, it is known as jute bagging, and commonly invoiced as such, and it is this condition that fixes the classification.

Paragraph 277 of the tariff act reads:

All manufactures of flax, hemp, jute, or other vegetable fibre, except cotton, or of which these substances or either of them is the component material of chief value, not specially provided for in this Act, thirty-five per centum ad valorem.

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And under the free list, paragraph 392½ reads:

Bagging for cotton, gunny cloth, and all similar material suitable for covering cotton, composed in whole or in part of hemp, flax, jute, or jute butts.

And paragraph 424½: "Burlaps, and bags for grain made of burlaps."

So that, in consideration of the Appraisers' findings as to the known commercial designation of the goods, it was not entitled to classification as burlaps under paragraph 424½.

As it relates to the second question, it is very apparent that it was admissible free of duty as jute bagging under paragraph 392½. But the Government urges that the claim made was not specific to bring it within that paragraph, and that therefore the importers are precluded from now insisting that it is so exempt from duty.

By the 14th section of the act of June 10, 1890, which is now in force and effect, the protestant is required to set forth his claim "distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon" (26 Stat., 137, ch. 407). This statute is an amendment of a prior one, but without changing the purpose as it respects the subject-matter under consideration. In dealing with the purpose of the prior statute, Mr. Justice Curtis has said, in Warren *v.* Peaslee (Fed. Cas. No. 17,198), that the act—

Had two main objects in view; one being to apprise the collector of the objections entertained by the importer, before it should be too late to remove them, if capable of being removed; the other to hold the importer to those objections which he then contemplated, and on which he really acted, and prevent him, or others in his behalf, from seeking out defects in the proceedings, after the business should be closed, by payment of the money into the Treasury.

In a later case, Davies *v.* Arthur (96 U. S., 148), it is said:

Technical precision is not required; but the objections must be so distinct and specific as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated.

And so in another case, Schell's Executors *v.* Fauche (138 U. S., 562):

A protest which indicates to an intelligent man the ground of the importer's objection to the duties levied upon the articles should not be discarded because of the brevity with which the objection is stated.

In pursuance of these rulings it has been held, where the protest referred to an act that had been superseded by a later one, it being apparent that the protestant had made a mistake as to the law then in force, that his claim should not be rejected, and that the claim was sufficiently specific to bring it within the intendment of the act of June 10, 1890. Shaw *v.* United States (122 Fed. Rep., 448). So in another case where the protest set forth, "that the said goods under existing laws are dutiable at 2 cents per pound, and the exaction of a higher rate is unjust and illegal," it was held that it was sufficient, in view of the fact that there were but three paragraphs bearing upon the article subject to duty, and two of these made the article bear duty at 2 cents per pound. It is said there by Mr. Justice Shiras, who announced the opinion of the court, that—

The collector could not have been perplexed by the omission to name the specific paragraph which the importer sought to have applied, for there were but two paragraphs, besides 239, which dealt with the subject, namely, paragraphs 318 and 319, and under either of them the duty was that claimed by the importer, 2 cents per pound. United States *v.* Salambier (170 U. S., 621).

These cases are illustrative, and indicate that absolute precision is not required, so that the specific claim that the protestant has in mind is brought with reasonable

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intendment to the attention of the collector of customs, to the end that that officer may make the correction if an error has been made in his assessment.

In the case of Herrman *v.* Robertson (152 U. S., 521) it was held that the protest was defective and insufficient because it failed to point out or suggest in any way the provision which actually controlled, and in effect only raised the question as to which of two clauses, under one or the other of which it was assumed that the importation came, should govern as being most applicable.

United States *v.* Bayersdorfer & Co. (126 Fed. Rep., 782; T. D. 24923) is in point. The claim in that case was that the goods were free of duty either under paragraph 617 or 548 of the present act, or that, if dutiable, they were subject to a duty of only 10 per cent under section 6. The Board of Appraisers found that the merchandise was on the free list, and was properly referable to paragraph 566, yet held that, because the claim of the protestants was not made under that paragraph, nor was so specified as to bring it within the purview thereof, it should be rejected. The matter coming before the circuit court, the finding of the Appraisers was reversed; but, on appeal to the circuit court of appeals, the circuit court was reversed and the decision of the Appraisers affirmed, for the reason assigned by them. The court says:

> But the protest in question here not only failed to call the collector's attention to the paragraph which it is now claimed governed, but the importers based their objections upon other specified provisions of the act, under which they claimed that the merchandise was either entitled to free entry or was subject to a less rate of duty than the collector had assessed. Having regard to the terms of these protests, how can it be said that an objection which was grounded upon a paragraph not therein mentioned or referred to was at the time in the mind of the importers, or that it was so "distinctly and specifically" brought to the notice of the collector as to apprise him of the "true nature and character" of the objection, "to the end that he might ascertain the facts, and have an opportunity to correct the mistake?"

In another case, decided by the same court at the same time, United States *v.* George Knowles & Son (126 U. S., 787; T. D. 24922), the importation involved was of merchandise invoiced as crude flint stone. The collector assessed it for duty under paragraph 98 of the tariff act of October 1, 1890. The importers filed a protest, claiming free entry under paragraph 574. The Board of Appraisers held that paragraph 574 did not apply, and affirmed the collector's decision. The view was expressed that paragraph 651 of the free list applied, but, notwithstanding, the Board held that inasmuch as the importers had not called the attention of the collector to that paragraph, but in their protest had put their claim upon paragraph 574, they were bound thereby. This case, like the former one, was appealed to the circuit court and reversed; but, upon an appeal to the court of appeals, the circuit court was reversed and the decision of the Board of Appraisers affirmed. The facts of this latter case are so similar to those found here that there is left no room for distinction. The protestants here claimed specifically that the fabric was burlap, free of duty under paragraph 424½; but, as I have shown, it is not subject to classification as burlaps, because not so commercially known in the market. There was no claim made that it was jute bagging, or that it was nondutiable under paragraph 392½. No reference whatever is made to that paragraph, and, from a reading of the claim in its entirety, there is no suggestion that the protestants had in mind at the time of filing the protest that the fabric was admissible free of duty under paragraph 392½. The only indication anywhere in the claim which would suggest that they intended to bring it within that paragraph is the use of the term "hop cloth" contained in parenthesis. But that was only inserted as another name for burlap, and not that it was designed to indicate that the fabric was jute bagging.

For the reason, therefore, that the claim was not preferred in view of paragraph 392½, but was that the fabric was burlap, admissible free of duty under paragraph 424½, the judgment of the Appraisers must be affirmed, and it is so ordered.

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(T. D. 28060.)

Drawback on agricultural implements.

Drawback on plows and other agricultural implements manufactured by B. F. Avery & Sons (Incorporated), of Louisville, Ky., with the use of imported pig iron and imported steel sheets and billets.—T. D. 28029 of March 22, 1907, extended.

TREASURY DEPARTMENT, *April 3, 1907.*

SIR: The Department's regulations of March 22, 1907 (T. D. 28029), establishing a rate for the allowance of drawback on farming machinery and implements manufactured by the Johnston Harvester Company, of Batavia, N. Y., with the use in part of imported pig iron and imported steel billets, are hereby extended, in so far as applicable, to cover the exportation of plows and other agricultural implements manufactured by B. F. Avery & Sons (Incorporated), of Louisville, Ky., with the use of imported pig iron and imported steel sheets and billets, in accordance with their sworn statement, dated March 20, 1907, transmitted herewith for filing in your office.

The drawback entry must show, in addition to the requirements of said regulations, the weight of the steel scrap and the current value thereof together with the value of the imported steel at the factory.

To the weight of the imported iron contained in the exported merchandise 5 per cent thereof may be added to compensate for loss in manufacture, while the proper allowance for wastage in connection with the steel shall be made in proportion to the value of such scrap at the time of manufacture and the price paid at the works for the imported steel.

Respectfully, JAMES B. REYNOLDS,
(45001.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28061.)

Panne velvets.

Decision of the United States circuit court for the southern district of New York, in United States *v.* Silberstein, Castell & Co., involving the dutiable classification of "panne velvets" (T. D. 27979), not accepted as a final adjudication of the issue.

TREASURY DEPARTMENT, *April 3, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states that the case of United States *v.* Silberstein, Castell & Co. (suit 4092; T. D. 27979) was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of so-called "panne velvets," which were assessed for duty at the rate of $1.50 per pound and 15

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per cent ad valorem as velvets, under paragraph 386 of the tariff act of July 24, 1897. The importers protested, claiming the merchandise to be plushes dutiable at the rate of $1 per pound and 15 per cent ad valorem, under the same paragraph, which claim was sustained by the United States circuit court for the southern district of New York on the evidence presented in this case.

In view of the unsatisfactory record presented, the Department does not deem it advisable to carry this case to the United States circuit court of appeals. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement of the case. It is to be understood, however, that the Department does not accept the ruling of the court in this case as a final adjudication of the issue, and you are therefore hereby directed to classify such merchandise as heretofore, in order that a stronger case may be prepared for the consideration of the court, upon a new record based upon more comprehensive trade testimony.

Respectfully, JAMES B. REYNOLDS,
(30570.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28062.)

Preserved pineapples.

Decision of the United States circuit court of appeals, second circuit, United States *v.* J. S. Johnson & Co. (T. D. 27830), acquiesced in.

TREASURY DEPARTMENT, *April 4, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, in which he states that suit 3398 (T. D. 27830), United States *v.* J. S. Johnson & Co., was recently decided by the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in suit consisted of certain pineapples in the preservation of which about 3 per cent of cane sugar had been added, and was assessed with duty by the collector of customs at the rate of 1 cent per pound and 35 per cent ad valorem, under paragraph 263 of the tariff act. The importers filed a protest, claiming the merchandise to be dutiable under the same paragraph at the rate of 25 per cent ad valorem as "pineapples preserved in their own juice."

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are, therefore, hereby authorized to forward the usual certified statement for the refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(5678 *k.*) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28063.)

Common carrier.

Approving bond of the Clyde Steamship Company of Maine for the transportation of unappraised merchandise from Philadelphia, Pa.

TREASURY DEPARTMENT, *April 5, 1907.*

SIR: The bond of the Clyde Steamship Company of Maine, transmitted by the collector at New York under date of the 2d instant, for the transportation of unappraised merchandise from Philadelphia, Pa., under the act of June 10, 1880, and amendments thereto, is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Philadelphia, Pa., to any places in the United States which are now or may be hereafter designated by law as places to which such merchandise may be transported, in suitable cars or vessels owned or controlled by it and running over such lines of railroad and plying upon such water routes as may be necessary to reach the port of destination named in the entry and manifest in each case.

Respectfully, JAMES B. REYNOLDS,
(18550.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28064.)

Amendment of article 1417, Customs Regulations, 1899.

Relative to reporting to United States attorneys failure of importers to pay balance of duties found due.

TREASURY DEPARTMENT, *April 5, 1907.*

SIR: The Department duly received your letter of the 8th of February last and other correspondence, in relation to the request of the United States attorney for the southern district of New York that cases be not presented to his office for suit, to recover balance of duties due when the importer can not be found.

The Department finds that it will relieve the office of the United States attorney of needless labor by amending article 1417 of the Customs Regulations of 1899 to read as follows:

"ART. 1417. A daily record shall be kept by the collector of all entries liquidated, stating the name of the vessel, port of departure, date of arrival, name of importer, and serial number and date of entry. A daily record must also be kept by both the collector and the naval officer of all duties, additional and regular, due upon liquidation, and notice of such liquidation be promptly sent to the parties in interest. If within ten days thereafter such duties shall not have been paid, the collector may, in his discretion, cause an investigation to be made to ascertain the whereabouts of such parties,

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and if they can not be found, or are dead leaving no estate, or are insolvent, he shall report the facts to the Solicitor of the Treasury, who may authorize the collector to treat such cases as uncollectible, without prejudice, however, to the right of action on the part of the Government. It shall be the duty of the collector to keep a record of all such cases and from time to time make such efforts as may be possible to collect such duties. In all other cases after said ten days the district attorney shall be instructed to proceed for the recovery of such duties."

Respectfully, JAMES B. REYNOLDS,
(44091.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28065.)

Rotten pineapples.

Decision of the United States circuit court, southern district of New York, United States *v.* Courtin & Golden (T. D. 27970), acquiesced in.

TREASURY DEPARTMENT, *April 6, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York dated the 14th ultimo, in which he states that the case of United States *v.* Courtin & Golden (T. D. 27970) was recently decided by the United States circuit court for the southern district adversely to the Government.

The merchandise consisted of pineapples in crates, which were seized, condemned, and destroyed by the State board of health. The court held that notwithstanding a tropical permit had been issued the merchandise was not subject to duty inasmuch as no portion of the goods passed into the control of the importers or became the subject of commerce within the United States.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward the usual certified statement for the refund of the duties collected in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(37432.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28066.)

Drawback on automobiles.

Drawback on automobiles manufactured by the Pope Manufacturing Company, of Hartford, Conn., with the use of imported Eisemann-Lavalette magnetos.—T. D. 28028 of March 22, 1907, extended.

TREASURY DEPARTMENT, *April 6, 1907.*

SIR: The Department's regulations of March 22, 1907 (T. D. 28028), providing for the allowance of drawback on the exportation

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of automobiles manufactured by the Pope Motor Car Company, of Toledo, Ohio, with the use of imported ball bearings and imported magnetos, are hereby extended so far as applicable to cover the exportation of automobiles manufactured by the Pope Manufacturing Company, of Hartford, Conn., with the use of Eisemann-Lavalette magnetos, in accordance with their sworn statement, dated March 27, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(38523.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28067.)

Drawback on clocks.

Drawback on clocks manufactured by the Sessions Clock Company, of Forestville, Conn., with the use of imported glass.

TREASURY DEPARTMENT, *April 6, 1907.*

SIR: On the exportation of clocks manufactured by the Sessions Clock Company, of Forestville, Conn., with the use of imported glass, a drawback will be allowed equal in amount to the duty paid on the glass so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the number of clocks of each name and number contained in each package and in the entire shipment.

The drawback entry must show the total number of each kind of clock, with name and number, exported, and the total quantity by measurement of glass contained therein, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 28, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported glass which may be taken as the basis for the allowance of drawback, may equal the quantity declared in the drawback entry, after official verification of exported quantities, provided it shall not exceed the quantities shown in the manufacturers' sworn statement.

Sworn supplementary schedules covering different styles and numbers of clocks may be filed, after verification of which drawback may be allowed.

Respectfully, JAMES B. REYNOLDS,
(45806.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28068.)

Drawback on spark plugs.

Drawback on Rajah spark plugs and complete center cores manufactured by the Rajah Auto-Supply Company, of New York City, with the use of imported porcelain tubes.—T. D. 27957 of March 2, 1907, extended.

TREASURY DEPARTMENT, *April 8, 1907.*

SIR: The Department's regulation of March 2, 1907 (T. D. 27957), establishing a rate for the allowance of drawback on the exportation of Mosler "spitfire" spark plugs and complete center cores manufactured by A. R. Mosler & Co. (Incorporated), of New York City, with the use of imported porcelain tubes, are hereby extended, so far as applicable, to cover Rajah spark plugs and complete center cores manufactured by the Rajah Auto-Supply Company, of New York City, with the use of imported porcelain tubes, in accordance with the sworn statement, dated April 2, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(44815.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28069.)

Drawback on Fels naptha soap.

Drawback on the exportation of Fels naptha soap manufactured by Fels & Co., of Philadelphia, Pa., with the use of imported borax.

TREASURY DEPARTMENT, *April 8, 1907.*

SIR: On the exportation of Fels naptha soap manufactured by Fels & Co., of Philadelphia, Pa., with the use of imported borax, a drawback will be allowed equal in amount to the duty paid on the imported borax so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages or cases and the net weight of the soap contained in each case and in the entire shipment. Each case must be marked with the gross, tare, and net weight.

The drawback entry must show the total quantity of soap exported, the quantity of imported borax used in the manufacture thereof, and, in addition to the usual averments, that the soap was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated January 18, 1907, transmitted herewith for filing in your office.

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In liquidation, the quantity of imported borax which may be taken as the basis for the allowance or drawback may equal that declared in the drawback entry, provided in no case shall it exceed 1 pound for each 100 pounds of soap exported.

Respectfully, JAMES B. REYNOLDS,
(3130 *l.*) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28070—G. A. 6573.)

Mill buttings or deal ends—Pulp wood.

Pieces of wood from 6 inches to 3 feet in length, and about 3 inches in thickness being the damaged or imperfect ends of deals, known as "mill buttings" or "deal ends," and used in the making of pulp for the manufacture of paper, *Held* to be entitled to free entry under the provisions of paragraph 699, tariff act of 1897, as pulp wood.—G. A. 5627 (T. D. 25166); United States *v.* Pierce (140 Fed. Rep., 962; T. D. 26820—147 Fed. Rep., 199; T. D. 27414) cited and followed; 186 Federal Reporter, 748; 127 United States Reports, 607, and 142 United States Reports, 615, cited.

United States General Appraisers, New York, March 30, 1907.

In the matter of protests 211305, etc., of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Burlington.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The question involved in these protests is whether certain pieces of sawed wood, known as "mill buttings" or "deal ends" are subject to duty at the rate of 20 per cent ad valorem under the provisions of paragraph 200 as assessed, or entitled to free entry under either paragraph 632 or 699, or subject to duty at the rate of 10 per cent ad valorem under paragraph 463 of said act.

From the evidence submitted it appears that in the preparation of deals in Canada for the English market, it is the practice to cut them about 3 inches thick with square edges and from 13 to 14 feet in length. The logs from which these deals are cut, by reason of jamming in the rivers or over the falls and from other causes, frequently become so damaged at the ends that when cut into deals they show imperfections, which, in order to perfect the deals, necessitates the cutting from the ends thereof pieces ranging from 6 inches to 3 feet in length, and it is such imperfect ends so cut which are known as mill buttings or deal ends that are here involved.

As to the uses to which these pieces are put it is shown that in Canada they are principally used at the mills for firewood, and where the mills are located near centers of population they are sometimes sold for firewood. It is also shown, however, that the only purpose for which they have been imported into the United States and actually used is the manufacture of pulp.

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Paragraph 200 under which duty was assessed reads as follows:

Hubs for wheels, posts, heading bolts, stave bolts, last-blocks, wagon-blocks, oar-blocks, heading-blocks, and all like blocks or sticks, rough-hewn, sawed or bored, twenty per centum ad valorem; fence posts, ten per centum ad valorem.

There is absolutely nothing in the record which, in our opinion, justifies the collector's classification under this paragraph, and it therefore but remains to be determined whether these pieces of wood should be subjected to duty at the rate of 10 per cent ad valorem under paragraph 463 as waste, or be admitted to free entry as paper stock, fit only to be converted into paper under the provisions of paragraph 632, or as pulp wood or firewood under the provisions of paragraph 699. There is some force to the Government's contention that if the merchandise is not subject to duty as assessed by the collector, then it should be subjected to duty as waste at 10 per cent ad valorem under the provisions of paragraph 463. Unquestionably if the deals from which these ends were cut had been imported into the United States in the condition as originally sawn at the mills they would have been subject to duty, and as the purpose of cutting these ends from the deals was to perfect them and make them marketable, the ends so cut might, we think, ordinarily be classed as waste; and unless it be that either of the provisions invoked for free entry be more specific in providing for their classification it would follow that duty should be assessed accordingly. There is, we think, no merit in the claim made under paragraph 632, for the reason that these pieces of wood can not be said to be paper stock "fit *only* to be converted into paper."

As we have already stated, the only purpose, so far as the record shows, for which these mill buttings or deal ends are imported into the United States, and the only use to which they are put, is the making of pulp for the manufacture of paper, and its only use in Canada, so far as disclosed, is as firewood. Pulp wood and firewood are both entitled to free entry under the provisions of paragraph 699. As an original proposition, we might have serious doubt as to whether it was the intent of Congress that such pieces of wood were intended to be included within the term "pulp wood," but in view of the ruling of the Board in G. A. 5627 (T. D. 25166) and the affirmance thereof by the United States circuit court and the United States circuit court of appeals in United States *v.* Pierce (140 Fed. Rep., 962; T. D. 26820—147 Fed. Rep., 199; T. D. 27414) we feel justified in holding that such waste pieces of wood which are only used in the United States in the manufacture of pulp, are entitled to free entry under paragraph 699 as claimed.

It appears from the testimony of the witness Myers that since the year 1892 it has been the practice to admit to entry these mill buttings or deal ends free of duty. This statement is not controverted and such practice having been sanctioned by the Government

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prior to the enactment of the present tariff law, we think it ought not to be disturbed. (136 Fed. Rep., 743; 127 U. S. Rep., 607; 142 U. S. Rep., 615.)

The claim in the protests for free entry is sustained and the decision of the collector reversed.

(T. D. 28071—G. A. 6574.)

Bort—Diamonds intended for industrial purposes.

1. For tariff purposes, the specific designation by which articles are known and dealt in in trade at and prior to the enactment of a tariff act is controlling and conclusive during the life of such act.

2. Small brown diamonds, weighing about one-sixteenth of a carat, with one surface of each cut and polished, intended for use as bearings in electrical instruments of precision, the same having been commercially known and dealt in in 1897 and prior thereto as "bort," are entitled to free entry under paragraph 545 of the present tariff act, and are not dutiable at the rate of 10 per cent ad valorem under paragraph 435 thereof.—United States *v.* Fifteen Drilled Diamonds (127 Fed. Rep. 758), United States *v.* American Express Company (140 Fed. Rep., 967; T. D. 26490 G. A. 5783 (T. D. 25565), and T. D. 26534, cited.

United States General Appraisers, New York, April 5, 1907.

In the matter of protests 242645, etc., of General Electric Company against the assessment o duty by the collector of customs at the port of Boston.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* This protest involves the classification for duty of an importation of diamonds intended for use as bearings in electric meters. These diamonds average sixteen to the carat, are brownish in color, and each has one surface cut and polished. Duty was assessed thereon at the rate of 10 per cent ad valorem under the provision of paragraph 435 for diamonds advanced in condition or value from their natural state by cutting. The importers claim free entry for the merchandise as bort, under paragraph 545 of the tariff act of 1897.

It is conceded that the stones in dispute are diamonds advanced in value by a process of cutting; hence it follows that they are dutiable as assessed unless more specifically provided for in the free list of the present tariff act.

The hearing in the case took place at Boston, the port of entry, but was adjourned to New York to enable the Government to procure evidence to support its contention that the disputed goods are dutiable and not free as claimed. Counsel for the Government and the importers having been notified that it was the desire of the Board to have an exhaustive investigation made touching all matters of fact pertinent to the issue, ample time was afforded to secure witnesses, and at the hearing in New York prominent importers and cutters of diamonds appeared and testified, from which testimony we find that at the date of the passage of the tariff act of 1897, and immediately

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prior thereto, the diamonds in question—which are used exclusively for industrial purposes—were known in trade as "bort." Upon this point the evidence is conclusive.

There was some testimony to the effect that by reason of the continuous advance in the price of all grades of diamonds during the last ten years the better qualities of bort capable of being cut into the form of rose diamonds would now be excluded from the trade designation of bort. The preponderance of the evidence, however, shows that at the present time the articles in the condition imported would not be known as rose diamonds; nor can they be commercially cut and adapted to jewelry purposes in this country.

Present conditions, however, are, in our opinion, not material to this case. For tariff purposes we are only concerned with the question as to how the merchandise was commercially known in 1897, and we find it was then known as, and was in fact, bort. On the other hand, precious stones cut and faceted and intended for jewelry purposes or suitable to be set in jewelry, even if made of bort, would not be known at the present time as bort; nor would they have so been known in 1897.

Based upon this finding, and following the ruling of the court in the cases of United States *v.* Fifteen Drilled Diamonds (127 Fed. Rep., 753) and G. A. 5783 (T. D. 25565), affirmed by the circuit court in United States *v.* American Express Company (140 Fed. Rep., 967; T. D. 26490), and acquiesced in by the Treasury Department (T. D. 26534), we sustain the protests now before us and reverse the decision of the collector in each case.

(T. D. 28072—G. A. 6575.)

Gauge of olive oil in tins.

1. PARAGRAPH 40, TARIFF ACT OF 1897.

Olive oil in tins is dutiable under paragraph 40, tariff act of 1897, at 50 cents per gallon based on the quantity of oil actually imported, and not on the capacity of the tin containers.—Following Zucca's case, G. A. 6416 (T. D. 27556).

2. QUANTITY—HOW ASCERTAINED.

A gallon of olive oil weighs accurately 7.56 pounds, equal to 3.43 kilos. *Held*, accordingly, that the various entries in question should be reliquidated on the basis of the net weight of the oil as stated in the invoices, which should be converted into gallons on the basis of this weight.

United States General Appraisers, New York, April 8, 1907.

In the matter of protests 177198, etc., of Acker, Merrall & Condit Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers; WAITE, G. A., absent).

SOMERVILLE, *General Appraiser:* The importations covered by the protests contained in the schedule consist of olive oil in tin cans, which has been made dutiable under paragraph 40 of the

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tariff act of 1897, which provides for "olive oil * * * in tins * * * fifty cents per gallon." The collector assessed duty in each instance on a certain quantity of oil as ascertained and reported by the local appraiser. The claim is made in each of the protests that duty was assessed upon an excessive quantity of the oil greater than that warranted by said paragraph 40 or any other provision of the tariff act, and that the dutiable quantity of the merchandise should have been ascertained on the basis of 7.56 pounds of oil to the gallon, or on such other basis as would give the actual quantity imported or which would approximate the same with reasonable certainty.

In Zucca's case, G. A. 6416 (T. D. 27556), it was observed by this Board that the various entries of similar merchandise then under consideration should be reliquidated on the basis of the net weight of the oil as stated in the invoices, unless shown to be incorrect, which should be converted into American gallons on the basis of the weight of 7.56 pounds to the gallon, equal to 3.43 kilos. It was further observed by the Board in that case that "said paragraph 40 without doubt requires duty to be assessed on the quantity of olive oil actually imported, measured by the gallon, and not merely on the capacity of the containers." And further:

> The gallon measure is not one of the measures adopted in Italy, and should therefore be ignored under the provisions of section 2837, Revised Statutes, which require such invoices to be made out "without any respect to the weights or measures of the United States." The description of gallons, therefore, must be regarded as surplusage, and would be no more conclusive as to the actual contents of the tins than the description in the schedule of spirits and wines of bottles designated as quart and pint bottles used as containers for imported liquors.
>
> The evidence shows without conflict that a gallon of olive oil weighs accurately 7.56 pounds or 3.43 kilos. This fact is recognized in Italy as well as in the United States, and is the weight reported for the last forty years in standard works specifying weights and measures, and has been recognized in our tariff legislation. (Heyl's Edition of the Tariff, 1877, Pt. III, p. 62; same, edition of 1891, Pt. IV, p 65.)

An appeal was taken from this decision to the circuit court for the southern district of New York, and the view of the Board was there affirmed. (United States *v.* Zucca & Co., reported by the Treasury Department in T. D. 28002.) It was there observed by Judge Hough as follows:

> The duty of the Government officers is to ascertain as nearly as possible the actual quantity imported in gallons, and the method adopted by the administrative officials should not be disturbed except upon a clear showing of unfairness or injustice. I am inclined to the opinion that the method adopted by the General Appraisers is the most accurate. Whether that be true or not, the testimony in this case is not sufficient to disturb it, there being no proof at all that the amount on which duty has been exacted was less than the amount actually coming into the country.

This decision has been acquiesced in by the Government, as we are officially informed, the Attorney-General declining to prosecute it further.

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Following the above decisions, the protests are sustained, with instructions to the collector to reliquidate the various entries on the basis of the net weight of the oil as stated in the invoices, which should be converted into gallons on the basis of 7.56 pounds or 3.43 kilos to the gallon.

The collector's decision is reversed in each instance.

(T. D. 28073—G. A. 6576.)

White dextrine.

A substance which has been long and generally known in trade as "white dextrine," notwithstanding it may not be dextrine in an exact scientific sense, is dutiable as "dextrine," under paragraph 286, tariff act of 1897, and not as starch or a preparation fit for use as starch under paragraph 285, a chemical compound under paragraph 3, or a nonenumerated article under section 6.

United States General Appraisers, New York, April 8, 1907.

In the matter of protests 154864, etc., of Charles Morningstar & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* As it is apparent that the parties to this controversy intend to take it to the courts for final adjudication, and as the Board is persuaded that the record only fortifies the conclusions reached with regard to the same commodity in the case of Charles Morningstar & Co., G. A. 5912 (T. D. 26011), it will not enter minutely into an analysis of the testimony or a discussion of the arguments advanced by counsel.

The product in question is invoiced as "soluble starch" and is of two varieties, designated, respectively, as Nos. 700 and 800. These were assessed by the collector at 2 cents per pound as "dextrine," under paragraph 286 of the tariff act of 1897, and are claimed to be dutiable at 1½ cents per pound under paragraph 285 as "starch" or "preparations fit for use as starch;" at 25 per cent ad valorem under paragraph 3 as chemical compounds; or at 20 per cent ad valorem as unenumerated manufactured articles under section 6. It seems unnecessary to quote any but paragraphs 285 and 286, which are as follows:

285. Starch, including all preparations, from whatever substance produced, fit for use as starch, one and one-half cents per pound.

286. Dextrine, burnt starch, gum substitute, or British gum, two cents per pound.

The testimony abundantly shows that starch products of the character of Morningstar's Nos. 700 and 800 are definitely, uniformly, and generally known in trade as "white dextrine" and are classed

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by dealers, manufacturers, and practical chemists with the commercial dextrines and not with starches, soluble or other, and it is also satisfactorily established that this situation existed when the tariff act of 1897 was passed and prior thereto. Indeed, it is difficult to see how the protests could be sustained upon Mr. Morningstar's own testimony. The following question and answer passed between counsel and him on direct examination:

Q. Please state by what name 700 and 800 are known among commercial men in this country.—A. Principally as dextrine, but under other names as well.

And on cross-examination he gave this testimony:

Q. You have used other names besides 700 and 800, such as "E. S. 800," "E. S. 700," "satin gum," "library paste dry." What were those—the special title given to the product of some particular merchant?—A. No, sir; it was the title I gave to the identical article which is sold under other conditions as No. 700 or No. 800.

Q. Those were titles which you gave?—A. Which we gave.

Q. They were your own titles?—A. Just personal trade names.

Q. They were not general trade names at all?—A. No, sir.

Q. Then what was the general trade name of this article which is called "700" and the article which is called "800?"—A. Erroneously, "dextrine."

Q. Nevertheless, whether erroneously or correctly, that always has been the general trade name, has it not?—A. Yes, sir.

Q. And it still is, is it not, in spite of the fact that you yourself imported it under the name of "soluble starch?"—A. Yes, sir.

Q. (By Judge SOMERVILLE.) That was true on or before July 24, 1897, was it?—A. Yes, sir.

It is immaterial that Nos. 700 and 800 are not dextrine in a strict scientific sense. According to technical authorities most of the substances to which the term dextrine is generally applied are mixed substances and not pure dextrine, including, we should suppose, the so-called "canary dextrines," said by the importers to be typical dextrines. In Thorpe's Dictionary of Applied Chemistry (1898, vol. 1, p. 647) it is said:

The substances known in England as dextrin or dextrine, British gum, starch gum, etc.; in France, as amidon grillé, gomme d'Alsace, leiogomme, gommeline, etc., and in Germany as dextrine, Stärkegummi, Rostgummi, etc., obtained by the action of heat, acids, or diastaste on starch, are not simple bodies but mixtures, one of the constituents of which may be dextrine, but at present we have little or no evidence of its presence in any of these products.

The following statements occur in Watts' Dictionary of Chemistry (1894, vol. 2, p. 378):

Most of the substances to which the term (dextrin) has hitherto been given have many properties in common with dextrin, but it is evident that many of these hold no relation to it, and many more of them are impure conditions of it. * * * Digestion with dilute acids, inorganic and organic, converts starch into dextrin and other bodies. The commercial products from these sources contain dextrin or dextrins, but there are no analyses of them to show what dextrins they contain.

The terms "burnt starch," "gum substitute," and "British gum," used in paragraph 286, are quite obviously not scientific nomenclature. According to the testimony of trade men they have been used

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at one time or another to designate dextrines. This tautology is strongly suggestive of effort by Congress in enacting paragraph 286 to reach everything commercially classed as dextrine, whether scientifically so known or not.

For the reasons stated in G. A. 5912 and those expressed above, the protests are overruled and the collector's decision affirmed.

(T. D. 28074.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 14889. — LEAF TOBACCO.—Protest 242091-24174 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 29, 1907. Opinion by Lunt, G. A.

The merchandise was held to have been properly classified as unstemmed wrapper tobacco under paragraph 218, tariff act of 1897.

No. 14890.—BEADED ARTICLES. — Protest 232056-24151 of Eberhard Heidhues against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Belts in part of beads were held to have been properly classified under paragraph 408, tariff act of 1897, relating to beaded articles.

No. 14891.—SPANGLED ARTICLES. — Protests 205937, etc., of Zadek Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified under paragraph 408, tariff act of 1897, relating to spangled articles.

No. 14892. —BEAD CHAINS.—Protest 111870 of Louis Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protest related to long chains composed in chief value of glass beads, which the importers contended had been improperly classified either as jewelry under paragraph 434, tariff act of 1897, or as beaded articles under paragraph 408. Protest overruled.

No. 14893.—BEADED ARTICLES—LAMP FRINGES.—Protests 107805, etc., of Louis Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protests related to lamp fringes, which were held to have been properly classified as beaded articles under paragraph 408, tariff act of 1897.

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No. 14894.—IMITATION JET BEADS—IMITATION PRECIOUS STONES.—Protest 61781 *f* of L. Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protest related to two-hole beads in imitation of jet, which are used in ornamenting combs. The importers contended that these articles had been improperly classified under paragraph 112, tariff act of 1897, relating to manufactures of paste, and they should have been classified as imitation precious stones under paragraph 485. Assessment affirmed.

No. 14895.—IMITATION JET CABOCHONS.—Protest 198640 of L. Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Imitation jet cabochons with faceted surfaces were held to have been properly classified as manufactures of paste under paragraph 112, tariff act of 1897, rather than as imitation precious stones under paragraph 485.

No. 14896.—DECORATED EARTHENWARE.—Protests 102185, etc., of Benziger Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protests related to religious figures which the Board held to have been properly classified under paragraph 95 or 96, tariff act of 1897, as ornamented or decorated terra-cotta ware.

No. 14897.—HAT PINS.—Protest 230760–24066 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protest was overruled on the authority of G. A. 6376 (T. D. 27390), the goods being similar to the hat pins included in Finding 1 of said decision.

No. 14898.—FOB CHAINS—JEWELRY.—Protest 212807 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Gilt and nickel fob chains with ornaments attached were held to have been properly classified as jewelry under paragraph 484, tariff act of 1897.

No. 14899.—IMITATION PEARLS PIERCED.—Protest 213848 of L. Heller & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6088 (T. D. 26554), relating to imitation pearls pierced.

No. 14900.—HAND MIRRORS.—Protest 215581 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Hand mirrors classified under paragraph 112, tariff act of 1897, were claimed to be dutiable as toys under paragraph 418. Protest overruled.

No. 14901.—INDIA-RUBBER SPONGES.—Protests 227489, etc., of Julius Lehmann *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6516 (T. D. 27843), relating to india-rubber sponges.

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No. 14902.—VIOLIN NECKS.—Protests 232063–24077, etc., of Lyon & Healy against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 4693 (T. D. 22141), relating to violin necks.

No. 14903.—NICKEL-PLATED WATCH CHAINS—JEWELRY.—Protest 232092–24133 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Nickel-plated watch chains were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14904.—CHEMICAL GLASSWARE.—Protests 48538 *b*, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The protests related to chemical glassware, portions of which were held dutiable as manufactures of the component material of chief value, as claimed by the importers on the authority of G. A. 6429 (T. D. 27584).

No. 14905.—WATCH CHAINS—SWIVELS—JEWELRY.—Protest 148749 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Silver-plated watch chains and completed swivels therefor were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14906.—CARVED IVORY—JEWELRY.—Protests 151797, etc., of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The Board sustained the importers' contention that carved ivory figures with a plain metal ring were dutiable under paragraph 450, tariff act of 1897, as manufactures in chief value of ivory. The remainder of the goods, consisting of buckles, etc., were held to have been properly classified as jewelry under paragraph 434.

No. 14907.—TOY JEWELRY—TOILETS—MIRRORS—CELLULOID TOYS.—Protests 191744, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Protests sustained as to portions of the goods, (1) so-called toilets, consisting of a paper case containing a comb, glove buttoner, and mirror, being held dutiable as manufactures of paper under paragraph 407, tariff act of 1897; and (2) the following articles being held dutiable as toys under paragraph 418: Bracelets, chains, etc., and celluloid mirrors and balls. Note Abstract 10046 (T. D. 27114) and G. A. 6297 (T. D. 27156).

No. 14908.—PINS—ORNAMENTS.—Protest 229107 of A. Bader Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907.

The protest related to ornaments and bonnet pins, classified as manufactures of glass under paragraph 112, tariff act of 1897, and to hat pins classified as jewelry under paragraph 434.

SHARRETTS, *General Appraiser:* * * * The hat pins are of two descriptions, viz, some similar to those included in Finding 1 of G. A. 6376 (T. D. 27390) and oth-

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ers having celluloid heads, celluloid the component material of chief value. No claim having been made under paragraph 17 relative to the pins with celluloid heads, and the collector's decision being in harmony with the decisions of this Board, we overrule the protest on all grounds.

No. 14909.—HAT PINS.—Protest 238268 of Kraemer & Foster against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Hat pins similar to those included in class 1 of G. A. 6376 (T. D. 27390) were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14910.—PINS—ORNAMENTS.—Protests 120819, etc., of D. Hirschberg against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The importer contended that the articles in controversy were dutiable as manufactures of the component material of chief value. This contention was sustained as to hat pins with plain round paste heads and as to belt buckles and other dress ornaments composed of base metal and paste, and was overruled as to hat pins with faceted paste heads.

No. 14911.—ORNAMENTS—CHAINS—PURSES—JEWELRY.—Protests 55160*f*, etc., of Mills & Gibb *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The merchandise consisted (1) of belt buckles and other dress ornaments composed of base metal and paste, (2) of muff chains composed of base metal, and (3) of metal purses. On the authority of Abstract 5635 (T. D. 26248), G. A. 6374 (T. D. 27382), and Tiffany *v.* United States (131 Fed. Rep. 398; T. D. 25316), portions of the goods were held dutiable as manufactures of the component material of chief value.

No. 14912.—PINS—ORNAMENTS—STRUNG BEADS.—Protests 9288 *h*, etc., of Strauss Brothers & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 5664 (T. D. 25254), G. A. 6374 (T. D. 27382) G. A. 6376 (T. D. 27390), and Frankenberg *v.* United States (146 Fed. Rep., 63; T. D. 27188), the following articles were held dutiable as manufactures of the component material of chief value: (1) Belt buckles and other dress ornaments composed of base metal and paste, (2) hat pins with plain round imitation pearl and jet heads, (3) silk ornaments, and (4) metal beads temporarily strung. A similar contention was overruled as to hat pins with faceted heads.

No. 14913.—JEWELRY — HAT PINS. — Protest 230795 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The following articles were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897: (1) Fob and watch chains, necklets, brooches, charms, and other articles; (2) hat pins, with ornamental heads, similar to those included in Finding 1 of G. A. 6376 (T. D. 27390).

No. 14914.—MILLINERY ORNAMENTS.—Protests 35916*f*, etc., of H. Hermann against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Metal and paste millinery ornaments were held dutiable as manufactures of the component material of chief value, as claimed by the importers. G. A. 6130 (T. D. 26653) followed.

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No. 14915.—ORNAMENTS—CHAINS—PINS.—Protests 87372*f*, etc., of Bloomingdale Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

On the authority of Abstract 5635 (T. D. 26248), G. A. 6130 (T. D. 26613), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390), the following articles were held dutiable as manufactures of the component material of chief value, as claimed by the importers: (1) Belt buckles and other ornaments composed of base metal and paste, and (2) fan and muff chains composed of base metal. Hat pins with ornamental heads were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 14916.—ORNAMENTS.—Protests 40668*f*, etc., of Morris Goldberg against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The merchandise consisted of belt buckles and other dress ornaments composed of base metal and paste, portions of which were held dutiable as manufactures of the component material of chief value, as claimed by the importers, on the authority of G. A. 6374 (T. D. 27382).

No. 14917.—ORNAMENTS—PINS—BUCKLES.—Protests 49085*f*, etc., of A. Steinhardt & Bros. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Belt buckles and other dress ornaments composed of base metal and paste, and hat and lace pins with plain round imitation pearl heads were held dutiable as manufactures of the component material of chief value as claimed by the importers. A similar contention was overruled as to hat pins with ornamental heads. G. A. 6374 (T. D. 27382) and G. A. 6376 (T. D. 27390) followed.

No. 14918.—PINS.—Protest 229256 of Dieckerhoff, Raffloer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

The decision of the collector was reversed as to a portion of the importation, consisting of bonnet pins, which were held dutiable as manufactures of the component material of chief value. G. A. 6376 (T. D. 27390) followed.

No. 14919.—PINS—BEAD NECKLACES.—Protests 229689, etc., of Royal Metal Manufacturing Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

Hat pins with ornamental heads similar to those included in class 1 of G. A. 6376 (T. D. 27390) were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897, and beaded necklaces were held to have been properly classified under paragraph 408 as beaded articles.

No. 14920.—BELTS.—Protests 26589*f*, etc., of Loeb & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of belts composed of base metal and paste, were held dutiable as manufactures of the component material of chief value, as claimed by the importers. G. A. 6376 (T. D. 27390) followed.

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No. 14921.—PROTESTS INSUFFICIENT.—Protests 183647, etc., of C. W. Leavitt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 29, 1907. Opinion by Fischer, G. A.

It appeared that the merchandise had been improperly classified, but as the importers failed to make the correct contention their protests were overruled.

No. 14922.—ARTIFICIAL SILK BRAIDS.—Protests 194040, etc., of Ries & Southeimer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2; March 29, 1907. Opinion by Fischer, G. A.

Artificial silk braids with soft finish were held to have been properly classified by similitude under paragraph 390, tariff act of 1897, as silk braids.

No. 14923.—ARTIFICIAL SILK BRAID.—Protest 221686–23296 of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14922 (*supra*).

No. 14924.—WATCHES IN PURSES.—Protest 227427 of Rosa M. Skiffington against the assessment of duty by the collector of customs at the port of New Haven. Before Board 2, March 29, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6015 (T. D. 26285), relating to watches in purses.

No. 14925.—SILK FABRICS.—Protest 221975 of Fleitmann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 29, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under the provision in paragraph 387, tariff act of 1897, for fabrics composed wholly of silk.

No. 14926.—WEIGHT OF ONIONS.—Protest 232055–24186 of E. L. Hasler Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, March 29, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Hills Brothers Company *v.* United States (T. D. 27750), relating to the weight of onions.

No. 14927.—DIRT IN NUTS.—Protests 231925, etc., of Austin, Nichols & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 29, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

No. 14928.—DUTIABLE WEIGHT OF TOBACCO.—Protest 228524 of Keiser & Boasberg against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 3, March 29, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 14929.—DUTIABLE WEIGHT OF TOBACCO.—Protests 217597, etc., of Ron-Fernandez Cigar Company against the assessment of duty by the collector of customs at the port of Duluth.

Same as No. 14928 (*supra*).

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No. 14930.—PROTESTS FILED TOO LATE.—Protests 285762, etc., of Bennett, Day & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 8, March 29, 1907. Opinion by Somerville, G. A.

The protests were dismissed because not filed within the time prescribed by law.

No. 14931.—WEIGHT OF WOOL—ABSORPTION OF WATER.—Protests 230895, etc., of Atlantic Mills *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 8, March 29, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6512 (T. D. 27800), relating to the question of allowance for the moisture absorbed by wool.

No. 14932.—PROTESTS ABANDONED.—Protests 172909, etc., of W. C. Horn, Brother & Co. and protest 43923*f* of Hummel, Kaufmann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 29, 1907. Opinions by Sharretts, G. A.

Protests abandoned; overruled.

No. 14933.—PROTEST ABANDONED.—Protest 229919 of Lehn & Fink. Opinion by Lunt, G. A.

Same as No. 14932 (*supra*).

No. 14934.—PROTESTS UNSUPPORTED.—Protests 155985, etc., of A. Hilbert *et al.* and protest 227487 of Kronfeld, Saunders & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 29, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14935.—PROTESTS UNSUPPORTED.—Protests 220089, etc., of Theo. Ascher Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14934 (*supra*).

No. 14936.—PROTESTS UNSUPPORTED.—Protests 231284, etc., of A. Selige Publishing Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 14934 (*supra*).

No. 14937.—PROTEST UNSUPPORTED.—Protest 231715 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3. Opinion by Somerville, G. A.

Same as No. 14934 (*supra*).

No. 14938.—PROTEST UNSUPPORTED.—Protest 231414 of B. Lowenstein & Bros. against the assessment of duty by the surveyor of customs at the port of Memphis. Before Board 3. Opinion by Hay, G. A.

Same as No. 14934 (*supra*).

No. 14939.—PROTEST UNSUPPORTED.—Protest 229779 of O. G. Hempstead & Son. Before Board 1. Opinion by McClelland, G. A.

Same as No. 14934 (*supra*).

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No. 14940.—ORNAMENTS.—Protests 58115*f*, etc., of Mills & Gibb *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 30, 1907. Opinion by Sharretts, G. A.

The decision of the collector was reversed as to belt buckles and other ornaments, which were held dutiable as manufactures of the component material of chief value, as claimed by the importers. G. A. 6374 (T. D. 27382) followed.

No. 14941.—PEARL HARDENING.—Protest 226952 of B. P. Ducas & Co against the assessment of duty by the collector of customs at the port of New York. Before Board 1, March 30, 1907. Opinion by McClelland, G. A.

The merchandise was found to consist of artificial sulphate of lime, and, as claimed by the importers, was held dutiable under paragraph 91, tariff act of 1897, relating to "pearl hardening for paper makers' use." G. A. 4202 (T. D. 19581) followed.

No. 14942.—SILK BANDS AND BINDINGS.—Protests 203608, etc., of Fisher & Thompson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

The protests related to hat bands and bindings, which were held to have been properly classified under paragraph 389, tariff act of 1897, relating to such articles composed in part of silk.

No. 14943.—UNUSUAL COVERINGS—KNIFE BOXES WITH GLASS FRONTS.—Protest 216427 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

The articles in controversy consisted of boxes with glass fronts in which pocket-knives are secured by elastic hoops for display purposes. The importers contended that they had been improperly assessed as unusual coverings under section 19, customs administrative act of 1890. Protest overruled. United States *v.* Park (T. D. 27833) followed.

No. 14944.—LEAD IN TYPE METAL.—Protest 218269 of Syracuse Smelting Works against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

The merchandise was classified as lead in pigs under paragraph 182, tariff act of 1897, and was claimed to be dutinble under paragraph 190 as type metal. The Board found it to consist of type metal containing 84.5 per cent of lead, and sustained the importers' contention accordingly.

No. 14945.—NICKEL-PLATED PINS—WIRE ARTICLES.—Protest 219481 of A. J. Hague & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

The Board held that nickel-plated pins were properly classified as manufactures of metal under paragraph 198, tariff act of 1897, overruling the importers' contention that they should have been classified under the provision in paragraph 188 for pins not plated, or under paragraph 137, relating to wire articles.

No. 14946.—POST CARDS.—Protests 226526, etc., of C. B. Richard & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

The merchandise consisted of post cards, portions of which were held dutiable as lithographic prints under paragraph 400, tariff act of 1897, as claimed by the importers. G. A. 6369 (T. D. 27359) followed. The remainder of the merchandise was held to have been properly classified as printed matter under paragraph 403.

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No. 14947. — IRON CASTINGS. — Protest 226894 of Robert Rossman against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

Cast-iron material for a fireplace was held dutiable under the provision for castings in paragraph 148, tariff act of 1897, as claimed by the importer. Other contentions made in the protest were overruled.

No. 14948.—FURNISHED NEEDLECASES.—Protest 234725 of G. W. Sheldon & Co. against the assessment of duty by the collecter of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 14504 (T. D. 27937), relating to furnished needlecases.

No. 14949.—FURNISHED NEEDLECASES.—Protest 227988 of Watson, Porter, Giles & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6220 (T. D. 26887), relating to furnished needlecases.

No. 14950.—LACE NECKWEAR.—Protests 228895, etc., of M. H. Frank & Co. and protests 230604, etc., of M. Doob, Sons & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Goldenberg *v.* United States (T. D. 27894), relating to lace neckwear.

No. 14951.—WEIGHT OF ONIONS.—Protest 229271 of W. M. French against the assessment of duty by the collector of customs at the port of New York. March 30, 1907.

Same as No. 14926 (*supra*).

No. 14952.—ARROWROOT STARCH.—Protest 229300 of G. Norman against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 30, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Leaycraft *v.* United States (130 Fed. Rep., 106; T. D. 25221) and Middleton *v.* United States (T. D. 27749).

No. 14953.—ESSENCE OF COFFEE.—Protest 221769 of E. C. Hazard & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, March 30, 1907.

The merchandise, which was invoiced as essence coffee and was classified as an unenumerated manufactured article under section 6, tariff act of 1897, was claimed to be either free of duty as coffee under paragraph 529, tariff act of 1897, or dutiable as coffee substitute under paragraph 283, or as an unenumerated unmanufactured article under said section. Protest overruled.

HAY, *General Appraiser:* * * * The appraiser reports that the merchandise consists of a liquid extract of the coffee bean commercially known as essence of coffee and not as coffee or coffee substitute. The sample bottle submitted at the hearing is labeled "Concentrated essence of Turkey coffee," with directions for adding to one or two teaspoonfuls of the essence sugar and milk or cream and boiling water to make a cup of coffee. The witnesses introduced by the importer at the hearing testified that they had no knowledge of the ingredients composing the commodity in question, but that it was used as a beverage, and one of them expressed the belief that it was composed of coffee and chicory.

With no other testimony before us than was presented, we could not sustain either of the importers' contentions. It is certainly not coffee, although coffee doubtless

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enters very largely into its composition, and in fact it may be manufactured wholly from coffee. It can not in our judgment come under paragraph 288, as it is apparent from the reading of that paragraph that it is intended to cover commodities that are not coffee and yet used as a substitute for it. No other paragraph of the law under which the commodity could be classified has been called to our attention, and the classification made by the collector is apparently a correct one. The commodity is not an unmanufactured article, and if it is assessable under section 6, it is of course at the higher rate.

No. 14954.—PROTESTS ABANDONED.—Protests 218930, etc., of L. Metzger & Co. *et al.*, protests 12416 *h*, etc., of Veit, Son & Co., and protests 225743, etc., of L. Wertheimber against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinions by Fischer, G. A.

Protests abandoned; overruled.

No. 14955.—PROTESTS ABANDONED.—Protests 221154, etc., of J. & H. Rosenberg *et al.* Opinion by Howell, G. A.

Same as No. 14954 (*supra*).

No. 14956.—PROTESTS ABANDONED.—Protests 229251, etc., of A. Caldoir *et al.* Before Board 1. Opinion by McClelland, G. A.

Same as No. 14954 (*supra*).

No. 14957.—PROTESTS ABANDONED.—Protests 200049, etc., of American Specialty Company *et al.* Before Board 3.

Same as No. 14954 (*supra*).

No. 14958. — PROTESTS UNSUPPORTED. — Protest 230601 of American Express Company, protest 229778 of O. H. Hart, protest 229937 of Perry, Ryer & Co., protest 229940 of Thos. Prosser & Son, protests 4529 *h*, etc., of Leon Rheims Company *et al.*, protest 215339 of Max M. Schwarcz & Co., and protest 225504 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, March 30, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 14959.—PROTESTS UNSUPPORTED.—Protests 35404 *f*, etc., of B. Blumenthal & Co. *et al.*, protest 232142 of G. F. A. Bondies, and protest 220753 of Mills & Duflot. Opinions by Howell, G. A.

Same as No. 14958 (*supra*).

No. 14960.—PROTESTS UNSUPPORTED.—Protests 225611, etc., of John V. A. Cattus and protests 225629, etc., of B. Illfelder & Co. Before Board 3. Opinions by Hay, G. A.

Same as No. 14958 (*supra*).

No. 14961.—PROTESTS UNSUPPORTED.—Protests 229453, etc., of Quong Yuen Shing *et al.* Before Board 3. Opinion by Waite, G. A.

Same as No. 14958 (*supra*).

No. 14962.—PROTEST UNSUPPORTED.—Protest 231984 of Reed & Keller. Before Board 1. Opinion by McClelland, G. A.

Same as No. 14958 (*supra*).

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No. 14963.—PEANUT OIL.—Protest 225639 of La Manna, Azema & Farnan against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 1, 1907. Opinion by McClelland, G. A.

The merchandise was held free of duty under paragraph 626, tariff act of 1897, as oil of nuts (peanuts).

No. 14964.—SMALTS.—Protest 199478 of Hanshaw, Fuller & Goodwin Company against the assessment of duty by the collector of customs at the port of Cleveland. Before Board 1, April 1, 1907. Opinion by McClelland, G. A.

The merchandise, which was alleged to consist of silicate of soda or of soda and potash, was held to have been properly classified under paragraph 58, tariff act of 1897, as smalts.

No. 14965.—MOLDERS' PATTERNS.—Protests 223595, etc., of National Malleable Castings Company against the assessment of duty by the collector of customs at the port of Cleveland. Before Board 1, April 1, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

No. 14966.—LEATHER GLOVES.—Protests 230767-24126, etc., of Wilson Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 1, 1907. Opinion by McClelland, G. A.

The importers contend that leather gloves had been improperly subjected to the embroidery rate provided in paragraph 445, tariff act of 1897. Protests sustained.

No. 14967.—TOY BUTTON HOOKS.—Protest 216144 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907. Opinion by Fischer, G. A.

The protest related to button hooks, which were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 14968.—STEEL POINTS—RIVETS.—Protests 218889, etc., of Morris Goldberg *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907.

The articles in controversy, which were classified as manufactures of metal under paragraph 193, tariff act of 1897, were claimed to be dutiable as rivets under paragraph 167. Protests overruled.

FISCHER, *General Appraiser:* The merchandise consists of small, stud-like articles of steel, used for the purpose of securing together the parts of millinery ornaments and buckles, when the same are not made in one piece, and on leather and fabric belts as ornamentation. * * * The articles have brightened and polished heads, and some are cut, as well, which are in themselves ornamental and decorative in design, entirely different from the articles ordinarily coming under our observation and known to us as rivets. At the hearing the importer called but one witness, one of his salesmen, but his testimony is clearly insufficient to establish that these goods are commercially known as rivets. Berbecker *v.* Robertson (152 U. S., 373) and Neuss *v.* United States (142 Fed. Rep., 281; T. D. 26597). Though not decisive of the question of commercial designation, it is worthy of note that on both invoices the goods are described, not as rivets, but as "steel points," notwithstanding that the goods come from two different European houses. On the other hand, the Government produced two witnesses from the domestic hardware trade, one of whom was especially well qualified as having dealt in goods of substantially the same character; and the testimony of both agreed that these articles are not rivets. The trend of their testimony

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was that the articles are usually known as "French points," agreeing in a way with the invoice designation referred to, and more specifically as nails, decorative nails. On this record we hold that the protestant has failed to sustain the burden of proving that his contention is right.

No. 14969.—Silk Belts—Wearing Apparel.—Protest 221467 of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907.

The importers objected to the classification of the merchandise as silk wearing apparel under paragraph 390, tariff act of 1897, contending that it was dutiable under paragraph 320, 387, 389, or 391.

Fischer, *General Appraiser:* * * * We find from the testimony and the sample admitted in evidence that the articles are woven silk belts, complete except for a buckle or clasp. It is obvious that they are advanced beyond the condition of belting, and there is no evidence that they are commercially known as belting. This being so, it is clear that the provision for silk wearing apparel, "manufactured in whole or in part," in paragraph 390 is more specific than any of the provisions cited in the protest. G. A. 6116 (T. D. 26613), holding men's silk scarfs in the piece to be dutiable as partly made wearing apparel, is precisely in point; and, following it, we overrule the protest and affirm the decision of the collector.

No. 14970.—Old Electroplates—Manufactures of Metal.—Protest 227495 of Nassau Smelting and Refining Works against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907.

The merchandise in controversy consisted of old electroplates, and was classified under the provision in paragraph 182, tariff act of 1897, for "old scrap lead fit only to be remanufactured."

Fischer, *General Appraiser:* * * * The merchandise is claimed to be free of duty under paragraph 690, or paragraph 533, or directly or by similitude, at 1½ cents per pound for the lead contained therein, under paragraph 190, or at 25 per cent under paragraph 166, or at 20 per cent under paragraph 183, or at 45 per cent under paragraph 193. The report of the Government chemist, upon which the appraising officer based his report, is as follows:

The sample consists of old electroplates, together with scrap lead. It has the following composition, and in my opinion is not type metal: 90.74 per cent lead; 3.63 per cent copper; 2.58 per cent antimony; 3.06 per cent tin, iron, etc. (by difference).

No evidence was offered by the importers, the case having been submitted for decision on the record. The articles are no longer commercial electrotype plates as provided for in paragraph 166, and the report of the chemist disposes of the claims under paragraphs 690, 533, 190, and 183, leaving only that under paragraph 193 to be considered.

In G. A. 5171 (T. D. 23852) it was held that the provisions in paragraph 166 of the tariff act of 1894 for "lead in pigs and bars, molten and old refuse lead run into blocks and bars, and old scrap lead fit only to be remanufactured" applied only to commercially pure lead, and, inasmuch as these provisions were reenacted *in haec verba* in the present law, they should receive the same construction. DeForest *v.* Lawrence (13 How.. 274–282); *In re* Guggenheim Smelting Company (121 Fed. Rep., 158); Brennan *v.* United States (136 Fed. Rep., 743; T. D. 26817). It would seem, accordingly, that the assessment made by the collector in this case was in error. Basing his argument on the ruling in G. A. 5171 (*supra*), importers' counsel has submitted a brief in favor of the classification of the merchandise under paragraph 181, but as the protest makes no claim under paragraph 181 the contention can not be considered.

Inasmuch as the goods are manufactured articles not specially provided for, composed in part of lead, we hold that they fall within the terms of paragraph 193 and are dutiable thereunder, as alternatively claimed in the protest, at 45 per cent, a rate higher than that assessed.

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No. 14971.—PRINTING PAPER.—Protests 225328, etc., of E. Dillingham against the assessment of duty by the collector of customs at the port of Ogdensburg. Before Board 2, April 1, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of Abstract 3933 (T. D. 25825), Abstract 4815 (T. D. 26072), and Abstract 9686 (T. D. 26997), relating to printing paper.

No. 14972.—ANTIMONIAL LEAD.—Protest 226077 of Damascus Bronze Company against the assessment of duty by the surveyor of customs at the port of Pittsburg. Before Board 2, April 1, 1907. Opinion by Fischer, G. A.

The merchandise, which was classified as lead in pigs under paragraph 182, tariff act of 1897, was claimed to be dutiable under paragraph 190 as type metal. Protest sustained, the antimonial content being found to be 13.1 per cent.

No. 14973.—FRAME FOR PAINTING.—Protest 226399 of American Express Company against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 2, April 1, 1907.

This case relates to an oil painting in a gilt frame imported under bond in accordance with the terms of paragraph 702, tariff act of 1897, for permanent exhibition at Cornell University. The painting itself was classified free of duty under said paragraph, and the importers contend that the frame should have been accorded similar treatment.

FISCHER, *General Appraiser:* * * * We are of opinion that the contention of the importers that the frame is likewise free of duty is correct. While it is true that the general rule is that paintings and frames are separable for tariff purposes, articles imported under the circumstances present in the case at bar are on a different basis. For the purposes of this paragraph the painting and frame constitute an entirety. As already indicated, a bond was given on entry which covered the frame as well as the painting, and under the terms of such bond no duty accrues unless the articles are used in any manner contrary to the purpose declared on entry. There is no allegation here that the conditions of the bond have not been complied with; and we hold, accordingly, that no duty should have been taken on the frame. The protest is sustained.

This ruling is not to be regarded as a precedent to be applied to importations under any other paragraphs of the free list. As an example, it is not an authority for admitting free of duty the frames on paintings by American artists residing abroad, which paintings are themselves free under paragraph 703, for obviously the frame is not "the production of an American artist."

No. 14974.—PARCHMENT PAPER PERFORATED.—Protest 244976 of American Express Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, April 1, 1907.

The merchandise consisted of sheets of parchment paper in which holes were cut along each side. The importers objected to its classification as manufactures of paper under paragraph 407, tariff act of 1897, contending that it should have been classified under paragraph 398, relating to parchment papers. Protest sustained.

FISCHER, *General Appraiser:* * * * We are of opinion this claim is correct. Cutting sheets of paper into smaller pieces does not result in a manufacture of paper, G. A. 5124 (T. D. 23667); still less so should cutting holes along the side of the sheets.

No. 14975.—PRINTING PAPER.—Protests 227130-23844, etc., of Downing, Judae & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 1, 1907. Opinion by Fischer, G. A.

As claimed by the importers, the merchandise was held dutiable as printing paper under paragraph 396, tariff act of 1897.

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No. 14976.—FEATHERSTITCH BRAIDS.—Protests 48192*f*, etc., of A. Steinhardt & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907. Opinion by Howell, G. A.

The protests related to featherstitch braids and other braids of cotton, which were held to have been properly classified as braids under paragraph 339, tariff act of 1897 Note Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456).

No. 14977.—UNTRIMMED HATS.—Protests 208135, etc., of Kaufman, Aron & Warshauer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 1, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified as untrimmed hats under paragraph 409, tariff act of 1897.

No. 14978.—SOY SAUCE.—Protests 221719–23256, etc., of King Yen Lo Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, April 1, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of G. A. 6550 (T. D. 27944), Abstract 12761 (T. D. 27591), and Abstract 14636 (T. D. 27745), relating to soy sauce.

No. 14979.—OLIVES IN KEGS.—Protest 222294 of Sobrinos de Izquierdo & Co. against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, April 1, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Lomba *v.* United States (T. D. 27707), relating to olives in kegs.

No. 14980.—CHERRIES IN MARASCHINO.—Protest 24652*f* of Park & Tilford against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Somerville, G. A.

The protest related to cherries in maraschino, which the Board held dutiable as unenumerated manufactured articles under section 3, tariff act of 1894, as claimed by the importers. All other grounds of protest were overruled. Reiss *v.* United States (135 Fed. Rep., 248; T. D. 25789) followed.

No. 14981.—COTTON-THREAD WASTE—COTTON TARES.—Protests 216395, etc., of Maltus & Ware against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Somerville, G. A.

The merchandise covered by protest 216395 consisted of thread waste, 40 per cent of which was estimated to be skeins and warp ends colored. On the authority of G. A. 6390 (T. D. 27453), it was held free of duty as cotton waste under paragraph 537, tariff act of 1897. The merchandise covered by protest 216396 consisted of cotton tares, which the Board held to have been properly classified under paragraph 463, tariff act of 1897, as waste, on the authority of G. A. 5078 (T. D. 23520).

No. 14982.—PARTS OF COLLAR OR CUFF BUTTONS.—Protest 203822–21677 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, April 1, 1907.

The articles in controversy, which were classified under paragraph 414, tariff act of 1897, as metal parts of collar or cuff buttons, were claimed to be dutiable under paragraph 193 as manufactures of metal. Protest overruled.

SOMERVILLE, *General Appraiser:* * * * Samples of the goods show them to consist of incomplete collar or cuff buttons composed of brass, requiring only to be attached to heads of bone or steel to form complete buttons. As the provision in said paragraph 414 for collar or cuff buttons is more specific than that in paragraph 193 for manufactures of metal, the classification as made by the collector appears to be correct.

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No. 14983.—Parts of Collar or Cuff Buttons.—Protest 212407 of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of Providence.

Same as No. 14982 (*supra*).

No. 14984.—Weight of Wool—Absorption of Water.—Protests 213033, etc., of Atlantic Mills *et al.* April 1, 1907.

Same as No. 14931 (*supra*).

No. 14985.—Spirits—Reciprocity.—Protest 88758*f* of Bloomingdale Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

As claimed by the importers, the merchandise (cordials) was held dutiable under the provision for spirits in the reciprocal commercial agreement with France. United States *v.* Weil (130 Fed. Rep., 331; T. D 25223) followed.

No. 14986.—Scientific Apparatus.—Protest 226954 of Eimer & Amend against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

On the authority of G. A. 5539 (T. D. 24909) the Board overruled the importers' contention for free entry under paragraph 638, tariff act of 1897, relating to scientific instruments, on the ground that there had not been a full compliance with the regulations of the Secretary of the Treasury.

No. 14987.—White Earth—Wrought Clay.—Protest 227989 of Theodore Weicker Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907.

The protest related to so-called white earth invoiced as "erdfarbe weiss." The importers objected to its classification as an unenumerated manufactured article under section 6, tariff act of 1897, contending that it was dutiable as wrought clay under paragraph 93. Protest sustained.

Hay, *General Appraiser:* * * * Filed with the papers is the report of the Government chemist stating that the "erdfarbe" is chiefly silicate of alumina, which the chemist in his testimony given at the hearing explained is clay. The chemist in his testimony further states that in his judgment the clay has been wrought, and that he made a baking test of the substance and it stuck together like clay.

No. 14988.—Philippine Products.—Protest 230478 of Isler & Guye against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of Fourteen Diamond Rings *v.* United States (183 U. S., 176), relating to Philippine products.

No. 14989.—Shrinkage of Hides.—Protests 230625, etc., of W. S. Lapham *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

Protests overruled on the authority of G. A. 6247 (T. D. 26956), relating to shrinkage of hides.

No. 14990.—Premature Protest.—Protest 230825 of North Adams Gas Light Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

The protest was dismissed because filed prior to liquidation of the entry.

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No. 14991.—PROTESTS FILED TOO LATE.—Protests 224300, etc., of F. Font y Hermano against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

The protests were dismissed because filed more than ten days after liquidation.

No. 14992.—CUBAN PRODUCTS.—Protests 231701, etc., of M. J. Dalton Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, April 1, 1907. Opinion by Hay, G. A.

The protests, which related to Cuban products, were overruled on the authority of Neely *v.* Henkel (180 U. S., 109).

No. 14993.—PROTEST ABANDONED.—Protest 227356 of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 1, 1907. Opinion by McClelland, G. A.

Protest abandoned; overruled.

No. 14994.—PROTEST ABANDONED.—Protest 227297 of Carson, Pirie, Scott & Co. Before Board 2. Opinion by Howell, G. A.

Same as No. 14993 (*supra*).

No. 14995.—PROTESTS UNSUPPORTED.—Protests 167261, etc., of China and Japan Trading Company *et al.* and protest 227492 of Lewy & Cohen against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 1, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 14996.—PROTEST UNSUPPORTED.—Protest 194503 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 14995 (*supra*).

No. 14997.—PROTEST UNSUPPORTED.—Protest 229063 of Charles Clarke & Co. against the assessment of duty by the collector of customs at the port of Galveston.

Same as No. 14995 (*supra*).

No. 14998.—PROTEST UNSUPPORTED.—Protest 224165 of A. Benson against the assessment of duty by the collector of customs at the port of Juneau.

Same as No. 14995 (*supra*).

No. 14999.—PROTEST UNSUPPORTED.—Protest 230024 of A. Collora. Opinion by Somerville, G. A.

Same as No. 14995 (*supra*).

No. 15000.—PROTEST UNSUPPORTED.—Protest 232096 of American Express Company against the assessment of duty by the collector of customs at the port of Boston. Opinion by Somerville, G. A.

Same as No. 14995 (*supra*).

No. 15001.—PROTEST UNSUPPORTED.—Protest 226711 of F. W. Myers & Co. against the assessment of duty by the collector of customs at the Port of Plattsburg. Before Board 1. Opinion by McClelland, G. A.

Same as No. 14995 (*supra*).

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No. 15002.—PROTESTS UNSUPPORTED.—Protests 221658, etc., of American Shipping Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1. Opinion by McClelland, G. A.

Same as No. 14995 (*supra*).

No. 15003.—PROTESTS UNSUPPORTED.—Protests 231672, etc., of Stix, Baer & Fuller Dry Goods Company and protest 231649 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. April 1, 1907.

Same as No. 14958 (*supra*).

No. 15004.—PROTESTS UNSUPPORTED.—Protests 211389, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. April 1, 1907.

Same as No. 14958 (*supra*).

No. 15005.—ORNAMENTS—PINS—MUFF CHAINS—HAND BAGS.—Protests 26019*f*, etc., of Weiller & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 3, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6374 (T. D. 27382), G. A. 6376 (T. D. 27390), and Abstract 5635 (T. D. 26248), various ornaments, muff chains, hat pins with jet heads, and metal hand bags, were held dutiable as manufactures of the component material of chief value, as claimed by the importers. As to the remainder of the merchandise, including hat pins with ornamental heads, the assessment was affirmed.

No. 15006.—PARTS OF COLLAR OR CUFF BUTTONS.—Protests 178736, etc., of King Collar Button Company *et al.* against the assessment of duty by the collector of customs at the port of New York. April 3, 1907.

Same as No. 14982 (*supra*).

No. 15007.—LINEN-THREAD WASTE.—Protests 223956, etc., of Castle, Gottheil & Overton and protest 228225 of Amerman & Patterson against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 3, 1907. Opinions by Somerville, G. A.

Protests sustained on the authority of G. A. 5719 (T. D. 25422), relating to linen-thread waste.

No. 15008.—DUTIABLE WEIGHT OF TOBACCO.—Protests 223472, etc., of Benj. Labe & Sons *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. April 3, 1907.

Same as No. 14928 (*supra*).

No. 15009.—CHURCH REGALIA.—Protest 230285 of G. Hirsch's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 3, 1907. Opinion by Hay, G. A.

Certain silk embroidery was held free of duty under paragraph 649, tariff act of 1897, as church regalia.

No. 15010.—PROTESTS ABANDONED.—Protests 204768, etc., of W. G. Moehring & Co. Before Board 3, April 3, 1907. Opinion by Somerville, G. A.

Same as No. 14954 (*supra*).

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No. 15011.—TUBERCULOSIS SERUM.—Protest 227422-23784 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 5, 1907. Opinion by Lunt, G. A.

So-called serum antituberculeux, classified as a medicinal preparation under paragraph 68, tariff act of 1897, was claimed to be free of duty under paragraph 692, relating to vaccine virus. The Board found it to be a serum used by inoculation in the prevention and cure of tuberculosis, and held it to have been properly classified. Note Abstract 14828 (T. D. 28036).

No. 15012.—ISINGLASS.—Protest 227124-23423 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 5, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 5228 (T. D. 24053), relating to isinglass.

No. 15013.—LANOLIN—MEDICINAL PREPARATION—ADEPS LANAE CUM AQUA—WOOL GREASE.—Protests 155519, etc., of Merck & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 5, 1907.

The merchandise in controversy, which was invoiced as "adeps lanæ anhydrous," "adeps lanæ cum aqua," and "wool grease," was classified as a medicinal preparation under paragraph 68, tariff act of 1897, and claimed to be dutiable either under paragraph 279, relating to wool grease, or under section 6, relating to unenumerated articles.

LUNT, *General Appraiser:* * * * The question here at issue is identical with that decided by the Board in G. A. 5881 (T. D. 25910), wherein it was held that certain preparations of wool grease known as lanolin, adeps lanæ anhydrous, and adeps lanæ hydrous (cum aqua) are dutiable under paragraph 68 as nonalcoholic medicinal preparations, the Board following Movius *v.* United States (66 Fed. Rep., 734). Upon appeal to the United States circuit court for the southern district of New York, the decision of the Board was affirmed (T. D. 27773).

In this case the importers offered additional testimony, but after a careful review of all the testimony submitted we conclude that the evidence does not warrant us in overruling the previous findings of the Board and the court. On the contrary, it is pointed out that the following authorities, viz, United States Pharmacopœia (edition of 1905), National Standard Dispensatory (edition of 1905), and the British Pharmacopœia include among its lists of medicinal preparations the anhydrous wool fat. Furthermore, in Merck's Index, an "encyclopedia for the physician and the pharmacist," under the title of "wool fat, anhydrous," it is stated that the same is for use externally and is the base for an ointment. Again it is to be noted that while the commercial wool fat is worth but 2½ to 3 cents per pound, the adeps lanæ anhydrous costs from 10 to 15 cents per pound. For the reasons above stated and for those in our former decision, we overrule the protests and affirm the decision of the collector.

No. 15014.—LANOLIN—MEDICINAL PREPARATION—ADEPS LANÆ CUM AQUA—WOOL GREASE.—Protests 121067, etc., of Meyer Brothers Drug Company *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15013 (*supra*).

No. 15015.—SODIUM SULPHATE.—Protest 225195 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 5, 1907. Opinion by Lunt, G. A.

On the authority of Abstract 13581 (T. D. 27734), the Board held so-called karlsbadersalz dutiable under paragraph 80, tariff act of 1897, as sulphate of sodium. Protest sustained.

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No. 15016.—ANTITOXIN—RAT VIRUS.—Protest 186208 of Thos. Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 5, 1907. Opinion by Lunt, G. A.

On the authority of Abstract 14828 (T. D. 28036), streptococus and tetanus antitoxins were held to have been properly classified as medicinal preparations under paragraph 68, tariff act of 1897, and rat virus as an unenumerated article under section 6.

No. 15017.—DIRT IN NUTS.—Protests 100691, etc., of Arguimbau & Ramce *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 5, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

No. 15018.—DUTIABLE WEIGHT OF TOBACCO.—Protests 209319, etc., of E. A. Calves & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. April 5, 1907.

Same as No. 14928 (*supra*).

No. 15019.—PROTEST ABANDONED.—Protest 225194 of Lehn & Fink against the assessment of duty by the collector of customs at the port of New York. April 5, 1907. Opinion by Lunt, G. A.

Same as No. 14993 (*supra*).

No. 15020.—PROTEST UNSUPPORTED.—Protest 227150 of Jas. S. Kirk & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 5, 1907. Opinion by Lunt, G. A.

Protest overruled for want of merit.

No. 15021.—PROTEST UNSUPPORTED.—Protest 230710 of B. R. Lawrence against the assessment of duty by the collector of customs at the port of Port Huron.

Same as No. 15020 (*supra*).

No. 15022.—PROTESTS UNSUPPORTED.—Protests 226880, etc., of Margolius & Co. *et al.* April 5, 1907. Opinion by Somerville, G. A.

Same as No. 14995 (*supra*).

No. 15023.—LACE ARTICLES.—Protest 231122 of J. & H. Rosenberg and protest 231245 of Titus Blatter & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 8, 1907. Opinions by Howell, G. A.

The merchandise was held to have been properly classified under paragraph 339, tariff act of 1897, relating to lace articles.

No. 15024.—DIRT IN NUTS.—Protests 190586, etc., of Habicht Braun & Co. April 8, 1907.

Same as No. 15017 (*supra*).

No. 15025.—DUTIABLE WEIGHT OF TOBACCO.—Protests 180209, etc., of W. K. Gresh & Sons *et al.*, protests 190735, etc., and protests 210278, etc., of Loeb, Nunez Havana Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, April 8, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27882), relating to the dutiable weight of tobacco entered for warehouse.

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No. 15026.—DUTIABLE WEIGHT OF TOBACCO.—Protests 213562, etc., of Hemmeter Cigar Company *et al.* against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 15025 (*supra*).

No. 15027.—PROTEST UNSUPPORTED.—Protest 231111 of Leon Rheims Company. April 8, 1907. Opinion by Howell, G. A.

Same as No. 14958 (*supra*).

TREASURY DEPARTMENT, *April 10, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 28075.)

Handmade paper.

BENNECHE *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 236 (suit 4049).

HANDMADE PAPER—INDIA TRANSFER PAPER.

In the provision in paragraph 401, tariff act of 1897, for "writing, letter, handmade, drawing, * * * and typewriter paper," the handmade papers covered thereby are not limited to writing papers; and handmade India transfer paper, used in making lithographic transfers and for printed proofs and plates, is included.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see T. D. 27497, reversing a decision of the Board of United States General Appraisers, G. A. 6058 (T. D. 26440), which had reversed the assessment of duty by the collector of customs at the port of New York on merchandise imported by Edward Benneche & Bro.

Albert H. Washburn, for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

On appeal from a decision of the circuit court of the southern district of New York, which reversed the decision of the Board of General Appraisers, which decision reversed the action of the collector.

COXE, *Circuit Judge:* The merchandise in question is handmade India transfer paper imported from China. It is used for making lithographic transfers and is sold to dealers in lithographic supplies. It is also used for printed proofs and plates. It was assessed by the collector as handmade paper under paragraph 401 of the act of 1897, the relevant portions of which are as follows:

Writing, letter, note, hand-made, drawing, ledger, bond, record, tablet, and typewriter paper, weighing not less than ten pounds; * * * but if any such paper is ruled, bordered, embossed, printed, or decorated in any manner, it shall pay ten per centum ad valorem in addition to the foregoing rates.

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The importers insist that the merchandise should have been assessed as paper not specially provided for, under paragraph 402, which, so far as it relates to this controversy, is as follows (30 Stat., 189):

Paper hangings and paper for screens or fireboards, and all other paper not specially provided for in this Act, twenty-five per centum ad valorem.

The Board of General Appraisers felt constrained to overrule the classification of the collector upon the authority of Miller *v.* United States (128 Fed. Rep., 469; T. D. 25006), in which it is said in substance that paragraph 401 relates exclusively to writing papers. Judge Wheeler, who decided the Miller case, also decided the case at bar. He points out that his previous interpretation of paragraph 401 was incorrect and *obiter dictum*, and finds the merchandise specifically provided for therein as handmade paper. We believe the later decision to be correct.

Paragraph 401 can not, as the appellants contend, be limited to the class of hard stock, hard sized writing and drawing papers. If it had been the intention of Congress so to limit the paragraph, that intention could have been succinctly expressed by the use of the words "writing and drawing paper weighing not less," etc. The inclusion of handmade paper and typewriter paper indicates a purpose not to confine the paragraph w thin the narrow limits suggested, for neither is particularly suitable for drawing or writing.

Furthermore, the appellants' contention overlooks the significance of the clause "but if any such paper is * * * printed or decorated in any manner." Congress evidently had in mind paper not only suitable for writing and drawing, but for printing as well. In other words, the language specifically covers a handmade printing paper. That the paper in question is handmade is undisputed. The statement that it is wholly unfit for printing is not sustained by the testimony, at least as broadly as counsel assert.

One of the witnesses says:

It is transfer paper, used from one stone to another. It would be bothersome, of course, to print that so many times and the lithographer takes a piece of that paper and puts it on the stone; from there it is printed out. That is what the paper is used for. * * *

Q. Do you know whether you can print on it?—A. Oh, yes.
Q. Do you know whether it can be printed on?—A. They print transfers on it.

That it can be printed on with type can be demonstrated by a very simple experiment with a rubber stamp.

We find that the paper in queston is specially provided for as *handmade* under paragraph 401 of the tariff act.

The decision is affirmed.

(T. D. 28076.)

Magnesite brick.

UNITED STATES *v.* HEMPSTEAD.

U. S. Circuit Court, Eastern District of Pennsylvania. March 14, 1907. No. 42 (suit 1729).

1. MAGNESITE BRICK—FIRE BRICK—COMMERCIAL DESIGNATION.

The term "fire-brick" in paragraph 87, tariff act of 1897, is a well-known commercial designation meaning brick made from fire clay, and does not include magnesite brick, which are dutiable under the provision in the same paragraph for "brick other than fire-brick."

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2. EVIDENCE—OFFICIAL REPORTS—ADMISSIBILITY.

A report by a chemist in the Customs Service, referring to merchandise the subject of a case pending before the Board of General Appraisers, *Held* incompetent because ex parte, not under oath, and not subject to cross-examination.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6067 (T. D. 26475), reversing the assessment of duty by the collector of customs at the port of New York on merchandise imported by O. G. Hempstead & Son. Note T. D. 26500, directing the application for review, and Fleming *v.* United States (124 Fed. Rep., 1014).

The communication referred to in the opinion herein as being incompetent consists of a chemist's report prepared in the laboratory connected with the office of the United States appraiser at the port of New York, in accordance with a request made by the Board to the appraiser.

W. C. Douglass, jr., assistant United States attorney, for the United States.

MCPHERSON, *District Judge:* The article in controversy is plain magnesite brick, weighing less than 10 pounds each, and the question for decision is, Under what clause of the tariff act of 1897 the duty should be imposed? The collector classified the importation under clause 3 as "brick, other than fire-brick, not glazed, enameled, painted, vitrified, ornamented or decorated in any manner," and assessed the duty at 25 per cent ad valorem. The importer protested; testimony was taken by the Board of General Appraisers, and the decision of the Board sustained the protest and imposed a duty of $1.25 per ton under the first clause of paragraph 87, which imposes a duty of that amount upon "fire-brick weighing not more than ten pounds each, not glazed, enameled, ornamented or decorated in any manner." The opinion of the Board is G. A. 6067, and is reported in T. D. 26475. From this ruling the collector appealed; and, further testimony having been taken under the order of the circuit court, this, with the testimony that was before the Board, has been duly considered.

It will be observed that the decision of the Board was apparently much influenced by a communication from R. W. Moore, a chemist in New York, which was evidently regarded by the Board as competent evidence, although it was purely an ex parte statement, not under oath, and not subject to cross-examination by the Government. It need scarcely be said that Mr. Moore's letter was incompetent and should not have been considered. I have laid it aside entirely, and base my conclusions solely upon the testimony that was taken in the regular way before the Board and under the order of the circuit court. This testimony I shall not discuss in detail. It is enough, I think, to say that as the decision of the case evidently turns upon a question of fact, the Government's witnesses have satisfied me beyond doubt that "fire-brick" is a phrase with a well-known commercial designation in the trade; that it means brick made from fire clay; and that magnesite brick are not commercially understood as being included within its scope. On the contrary, when magnesite brick are wanted they are always ordered *eo nomine*, and never as "fire-brick." The testimony establishes these facts clearly, and the result is that the commercial meaning of the word, according to well-established rules, must prevail. Maddock *v.* Magone (152 U. S., 368). In that case the Supreme Court of the United States said, upon page 371:

In Cadwalader *v.* Zeh (151 U. S., 171, 176), it was said that "it has long been a settled rule of interpretation of the statutes imposing duties on imports, that if words used therein to designate particular kinds or classes of goods have a well-known signification in our trade and commerce, different from their ordinary meaning among the people, the commercial meaning is to prevail, unless Congress has clearly manifested a contrary intention; and that it is only when no commercial meaning is called for or

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proved that the common meaning of the words is to be adopted." But it is also true that, as observed by Mr. Chief Justice Waite in Swan *v.* Arthur (103 U. S., 597, 598), "while tariff acts are generally to be construed according to the commercial understanding of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary use, unless the contrary is shown."

The inquiry was whether, in a commercial sense, the articles were so known, trafficked in, and used, under the denomination of toys, that Congress, in the use of the particular word, should be presumed to have had that designation in mind as covering such articles.

Necessarily the commercial designation is the result of established usage in commerce and trade, and such usage, to affect a general enactment, must be definite, uniform, and general, and not partial, local, or personal.

The decision of the Board of General Appraisers is reversed and the classification of the collector is affirmed.

(T. D. 28077.)

Reliquidation.

UNITED STATES *v.* HUNTER.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 232 (suit 3978).

RELIQUIDATION UNDER CONDITIONAL DECISION—DUTY OF COLLECTOR.

The Board of General Appraisers sustained an importer's protests, holding the merchandise dutiable at the maximum rate provided on goods of that class excepting those as to which it was ascertainable "from the invoices, samples, or records" that a lower rate was applicable. *Held* that in reliquidating in accordance with this decision the collector was not required to consider any data not supplied by the record made before the Board.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see T. D. 27510, reversing a decision of the Board of United States General Appraisers, G. A. 5985 (T. D. 26210), which had affirmed the decision of the collector of customs at the port of New York on importations by Hunter & Witcombe.

J. Osgood Nichols, assistant United States attorney, for the United States.
Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, which reversed a decision of the Board of General Appraisers sustaining the reliquidation of duties on certain cotton goods. The opinion of the circuit court will be found in T. D. 27510.

LACOMBE, *Circuit Judge:* The goods consisted of cotton curtains, table covers, and other similar merchandise, and were assessed for duty at 45 per cent ad valorem as manufactures of cotton not specially provided for under paragraph 322 of the tariff act of 1897. The importers protested, claiming that they should be classified according to the various provisions of the "countable" paragraphs of the cotton schedule. These paragraphs (304 to 309) prescribe rates of duty which vary with the number of threads to the square inch and vary also with the condition of the cotton cloth—whether bleached, dyed, colored, printed, etc., or not. In order to decide what

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rate of duty any particular piece of cotton cloth shall pay, evidence of some sort must be presented to the official who has to decide, showing how many threads there are to the square inch and whether it is or is not bleached, dyed, etc. Upon receipt of these protests the collector undertook to transmit to the Board of General Appraisers the invoices and all the papers and exhibits connected therewith, and the Board undertook to examine and decide the case. Under section 16 of the customs administrative act of 1890, the Board is given power to take additional proof, and it is and always has been the practice for the importer and the Government to offer to the Board any testimony which either side may think tends to support its contention. When the Board has decided such question (and no appeal is taken) it is the duty of the collector to liquidate the entry accordingly.

In this particular case the papers and exhibits which the collector transmitted to the Board were not sufficient to show the precise character and condition of the different articles so as to enable it to determine the exact rates of duty; and the importers failed to produce the additional evidence, which it would seem they might readily have procured, to secure such determination. The decision of the Board was as follows:

Where the particulars of count of threads, condition, weight, value, etc., necessary to reliquidation can be ascertained from the invoices, samples, or record, reliquidation will proceed at the applicable rates thus ascertained; that as to all items and cases wherein there can not be ascertained from the invoices, samples, or records the statutory particulars above stated, or any of them, sufficient for reliquidation at the appropriate rate, such reliquidation is for *want of proof in support of the protests* denied; but in such cases reliquidation at the rate of 40 per cent ad valorem, the maximum rate applicable to such goods as countable cottons, will follow.

No appeal was taken from this decision. Upon reliquidation the collector made return that, as the invoices failed to state whether the merchandise was bleached, unbleached, or colored, he applied the rate of 40 per cent ad valorem as directed by the Board.

Against this reliquidation the importers protested upon the ground that the collector "should have reliquidated the duty at 35 per cent ad valorem, the particulars shown on invoice and entry being sufficient to show that no higher rate could be applicable, but only 35 per cent *or some lower rate.*" If the facts were as stated in this protest it is manifest that there was the same defect of proof which existed when the Board directed reliquidation at 40 per cent; there is no averment that the invoice and entry were sufficient to show exactly under which specific provision any article should be placed. Some contention is made upon the proof that the collector did not supplement the record before him by sending to the appraiser's office or elsewhere for samples of the goods. But this was not an original liquidation; the Board upon a case made by the importers had decided that the proper rate was 40 per cent, and gave them one more chance to show exactly under what clause their various goods belonged. If the record sent back to the collector from the Board lacked proof sufficient to show this, it was for the importers to supply such further evidence as the decision allowed them to produce. Moreover, an examination of the record now before us leads to the conclusion that the samples from the appraiser's office would not have helped the situation unless they were supplemented by evidence of the importers as to the meaning of certain arbitrary letters "P.," "S. W.," etc., found upon the invoices. But the decision of the Board admitted no such proof; reliquidation was to be had on "invoices," "samples," and "record," which we assume means the record already made and which was before the Board.

We concur, therefore, with the Board in the conclusion that there was not sufficient data before the collector to enable him to reliquidate at lesser rates than the 40 per cent which the Board had already fixed upon "for want of proof in support of the protests."

The decision of the circuit court is reversed.

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(T. D. 28078.)

Niger-seed oil.

UNITED STATES *v.* COLBY.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 233 (suit 3967).

NIGER-SEED OIL—SOAP STOCK.

Niger-seed oil is free of duty under paragraph 568, tariff act of 1897, as an oil "commonly used in soap making" and "fit only for such use."

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see T. D. 27498, reversing a decision of the Board of United States General Appraisers, G. A. 5954 (T. D. 26109), which had affirmed the assessment of duty by the collector of customs at the port of New York on an importation by Colby & Co.

The merchandise consisted of oil expressed from niger seed. The question at issue is whether it was properly assessed with duty under the provision for expressed oils in paragraph 3, tariff act of 1897, as held by the Board, or was free of duty under the provision in paragraph 568 for oils "commonly used in soap making" and "fit only for such use," as claimed by the importers and held by the circuit court.

D. Frank Lloyd, assistant United States attorney, for the United States.
Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

PER CURIAM: Decision affirmed.

NOTE.—The Government in T. D. 28097 acquiesced in the foregoing decision.

(T. D. 28079.)

Appraisement of wool.

GULBENKIAN *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. March 26, 1907. No. 234 (suit 4125).

APPRAISEMENT—SEPARATION OF WOOLS—MIXED WOOLS.

In accordance with immemorial custom in the market of Bagdad, white and colored wools were bought together at the same price, without any distinction as to color; but before exportation they were separated, each color being baled by itself. *Held* that, in finding the "actual market value * * * in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States," under section 19, customs administrative act of 1890, the appraising officers should consider only the price paid in the Bagdad market, and that no distinction should be made between the value of the white and colored wools, but that all should be appraised at the same price.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see T. D. 27512, affirming a decision of the Board of United States General Appraisers, G. A. 6151 (T. D. 26719), which had affirmed the assessment of duty by the collector of customs at the port of New York on merchandise imported by G. Gulbenkian & Co.

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The importation in controversy consisted of 1,000 bales of wool, of which 800 were invoiced as white and 200 as colored. This wool was the subject of reappraisement proceedings under section 13, customs administrative act of 1890, before a single General Appraiser, and then, on appeal, before a Board of General Appraisers, as a result of which an advance in value which was made by the local appraiser stood affirmed. At the hearing before the Board, on proceedings brought under section 14 of said act for the purpose of testing the legality of the appraisement and reappraisements, the importers introduced evidence tending to show that the appraisement by the local appraiser was illegal. The Board, however, held that, whatever irregularity may have characterized that appraisement, it would be cured by a valid reappraisement by a General Appraiser, and that there was no evidence that the reappraisements before the General Appraiser and the Board had not been properly conducted. The assessment of duty was therefore affirmed. In the circuit court, on appeal, considerable additional evidence was introduced by the importers, but that court affirmed the decision of the Board.

The case involves the construction of section 19, customs administrative act of 1890. the pertinent part of which reads as follows:

SEC. 19. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price of such merchandise as bought and sold in usual wholesale quantities, at the time of exportation to the United States, in the principal markets of the country from whence imported, and in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, including the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

Hatch & Clute (*J. Stuart Tompkins* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

On appeal from a judgment of the circuit court affirming a decision of the Board of General Appraisers, which sustained the action of the collector in appraising an importation of 1,000 bales of white and colored Karadi wool from Bagdad.

The paragraphs of the tariff act of 1897 in question are as follows (30 Stat., 182–3):

PAR. 351. Class three, that is to say, Donskoi, native South American, Cardova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

PAR. 358. On wools of the third class and on camel's hair of the third class the value whereof shall be twelve cents or less per pound, the duty shall be four cents per pound.

PAR. 359. On wools of the third class, and on camel's hair of the third class, the value whereof shall exceed twelve cents per pound, the duty shall be seven cents per pound.

COXE, *Circuit Judge:* The question in controversy is whether the wool brought here from Bagdad, Turkey, shall pay 4 cents per pound under paragraph 358 or 7 cents per pound under paragraph 359. If the value of the wool was 12 cents or less per pound the appellants should succeed; if more than 12 cents per pound the appellee should succeed.

There is no disputed question of fact. The wool in question, without any distinction as to color, was purchased by the importers at Bagdad for 736 piasters per oke; and, after adding all packing charges required by section 19 of the administrative act, the value of the wool at Bagdad was less than 12 cents per pound. The appellants have been importing wool from Bagdad for twenty-five years. They purchased white and colored wool in the market for the same price and always invoiced their purchases at the cost price precisely as in the present instance. The white and colored wool are invariably sold together and for the same price.

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One of the importers testifies:

The owner of a lot will say "here is my lot, this is my price." We take it, we pack it as far as possible, so-called white and so-called colored separately. We sell the wool in this country. It contains maybe 30 per cent of gray, from 10 or 5 per cent. We can never separate them; we take one fleece, for instance, you will see on one side it looks all white, and turn it and find it is black or some other color. It is the character of the wool that they never come absolutely white; there is always mixed colors, part of the sheep fleece may be white, might have a black mark on it, or near the skirt may be yellow or brown. * * * We buy them at one price. If I were to invoice it at any different prices I would not know what price to invoice one from the others. * * * There is no distinction. We have to pay the same price whether it is white or colored.

The testimony establishes overwhelmingly and without contradiction that in the Bagdad market, from time immemorial, the white and colored wools have been sold together and always at the same price. Even when a partial separation was made, the price was the same for the white as for the colored wool. There is no such thing as a strictly white wool coming from the Bagdad markets. Wools called white by manufacturers and dealers are not white. There is no difference in quality between the so-called white and the so-called colored wools.

The local appraiser without altering the total invoice value, reduced the value of the colored wool to about 9 cents per pound and added the amount so deducted to the white wool, making the value above 12 cents per pound and thus subject to the high duty of paragraph 359. The action of the local appraiser was sustained on reappraisement. The Board of General Appraisers overruled the protests and its decision was affirmed by the circuit court.

We are of the opinion that the protests should have been sustained. When the merchandise arrived at the port of New York the duty of the collector was plain. Having ascertained that it was wool imported from Bagdad, he had only to ascertain its market value, not at New York or London or Marseille, but at *Bagdad*, add thereto the packing charges, and his duty was done.

If the value of imported wool is to be ascertained by proof addressed to each separate importation, a cumbersome, unworkable system will result, which will open the door to uncertainty and fraud. In order that the collector may have an infallible standard by which to measure value, Congress enacted (sec. 19, customs administrative act) that duty shall be assessed upon the actual market value of the merchandise as bought and sold in usual wholesale quantities in the principal markets of the country from whence imported. The rule thus fixed by statute is plain and simple, binding alike on importer and collector. Neither may vary or evade it. Neither may appeal to other criteria of value.

If the rule had been followed in the present case, the value of appellants' wool would inevitably have been fixed at less than 12 cents per pound. By discarding the rule and substituting argument and conjecture, a conclusion is reached which fixes the value of four-fifths of the importation at 13 cents per pound and one-fifth at 9 cents per pound. And yet, if the record contains a syllable of proof that any of this wool, or similar wool, was ever bought and sold in Bagdad for 13 cents or 9 cents per pound, or that such difference in value as this can exist in the same lot of wool, we have failed to discover it.

The argument of the appellee rests, we think, upon the initial fallacy that the white wool was worth more in the markets of Bagdad than the colored wool. The proof shows that it was not worth more, and a finding to the contrary must either be wholly arbitrary or based upon facts which the statute excludes from consideration, viz, value in this country. The value of the wool here or in foreign countries other than Turkey, the use to which the wool was to be put, the object of the purchaser in separating it, are all, in our judgment, matters extraneous to the issue. By the express command of the statute the collector was prohibited from considering anything but the actual

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market value of the wool in the principal markets of Turkey. Having ascertained that value he should have levied duty accordingly. The proof establishes beyond contradiction or doubt that the value of the wool at Bagdad was less than 12 cents per pound, and it should have been so fixed.

The decision is reversed.

(T. D. 28080.)

Discontinuance of notification to Department of filing of applications for reappraisement.

[Circular No. 26.]

TREASURY DEPARTMENT, *April 9, 1907.*

To collectors of customs:

You are instructed to discontinue the practice, required by T. D. 10127 and T. D. 12483, of July 29, 1890, and March 11, 1892, respectively, of notifying the Department of the filing of applications for reappraisement.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28081.)

Common carrier.

Approving bond of the Wabash Railroad Company for the transportation of unappraised merchandise from Toledo, Ohio.

TREASURY DEPARTMENT, *April 10, 1907.*

SIR: The Department hereby approves the bond of the Wabash Railroad Company, transmitted by said company from its general offices in St. Louis, Mo., on the 4th instant, for the transportation of unappraised merchandise from Toledo, Ohio, under the act of June 30, 1880, and amendments thereto, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport unappraised merchandise from Toledo, Ohio, to any ports in the United States, which are now or may be hereafter designated by law as places to which unappraised merchandise may be transported, in suitable cars owned or controlled by it and running over its lines of railroads and such connecting lines of railroads and on vessels plying on such connecting water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(18573.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Toledo, Ohio.*

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(T. D. 28082.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 28083.)

Drawback on aluminum castings, wire, cable, rivets, and other articles.

Drawback on castings, bare and insulated wire or cable, rivets, and other articles manufactured by the Pittsburg Reduction Company, of Pittsburg, Pa., from imported aluminum.—T. D. 27697 of November 10, 1906, extended.

TREASURY DEPARTMENT, *April 11, 1907.*

SIR: The Department's regulations of November 10, 1906 (T. D. 27697), establishing a rate for the allowance of drawback on sheets, bars, plates, and tubing manufactured by the Pittsburg Reduction Company, of Pittsburg, Pa., wholly from imported aluminum in the pig, are hereby extended, so far as applicable, to cover the exportation of castings, bare and insulated wire or cable, rivets, and other articles manufactured by said company from imported aluminum in accordance with their sworn statement dated January 3, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported aluminum in the pig which may be taken as the basis for the allowance of drawback may equal the quantity stated in the drawback entry after official verification of exported quantities, provided the same shall not exceed the net weight of the exported article, with an addition thereto not to exceed 1 per cent thereof to cover worthless waste.

Respectfully, JAMES B. REYNOLDS,
(45838.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28084.)

Drawback on psychine.

Drawback on psychine manufactured by the T. A. Slocum Company, of New York City, with the use of imported glycerin.—T. D. 26496 of June 15, 1905, extended.

TREASURY DEPARTMENT, *April 12, 1907.*

SIR: The Department's regulations of June 15, 1905 (T. D. 26496), establishing a rate for the allowance of drawback on ozomulsion manufactured by the T. A. Slocum Company, of New York City, with the use of imported pure Norwegian cod-liver oil and refined glycerin, are hereby extended, so far as applicable, to cover the exportation of psychine, manufactured by the same company with the use of imported glycerin, in accordance with their sworn statement, dated March 1, 1907, transmitted herewith for filing in your office.

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In liquidation, the quantity of imported refined glycerin which may be taken as the basis for the allowance of drawback should not exceed 16 per cent by volume of the exported psychine.

When the glycerin used has been refined from imported crude glycerin, the quantity of crude glycerin consumed may be determined by adding to the quantity of refined glycerin used 22 per cent of such quantity, in accordance with T. D. 17355 of August 1, 1896.

Respectfully, JAMES B. REYNOLDS,
(44515.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28085.)

Drawback on leather.

Drawback on split and grain leather manufactured by John A. Lord, of Peabody, Mass., with the use of imported solid quebracho extract.—T. D. 25855 of December 19, 1904, extended.

TREASURY DEPARTMENT, *April 12, 1907.*

SIR: The Department's regulations of December 19, 1904 (T. D. 25855), establishing a rate for the allowance of drawback on the exportation of sole leather manufactured by the United States Leather Company, with the use of imported solid quebracho extract, are hereby extended, so far as applicable, to cover the exportation of split and grain leather manufactured by John A. Lord, of Peabody, Mass., with the use of imported solid quebracho extract, in accordance with his sworn statement, dated April 4, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of solid quebracho extract which may be taken as the basis for the allowance of drawback shall not exceed the following quantities: Split leather, 1.76 pounds per side, .252 pound per pound; grain leather, retanned, .52 pound per side, .163 pound per pound.

Respectfully, JAMES B. REYNOLDS,
(33277.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28086.)

Drawback on tires.

Drawback on the exportation of rubber tires having outer cases of leather imported by the Continental Caoutchouc Company, of New York City, and fitted with valves of domestic manufacture.

TREASURY DEPARTMENT, *April 13, 1907.*

SIR: The Department's regulations of April 28, 1905 (T. D. 26328), providing for the allowance of drawback on rubber tires known as "Continental," imported by the Continental Caoutchouc Company,

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of New York City, and exported with valves of domestic manufacture fitted thereto, are hereby extended, so far as applicable, to cover the exportation of tires having outer cases of leather, imported by said firm and fitted with valves of domestic manufacture, in accordance with their sworn statement, dated April 4, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(24005.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28087.)

Production of samples.

Decision of the United States circuit court of appeals, second circuit, United States *v.* Herrmann *et al.* (T. D. 27981), involving the classification of so-called beaver strips or bands, acquiesced in.

TREASURY DEPARTMENT, *April 11, 1907.*

SIR: The Department is in receipt of reports from the United States attorney for the southern district of New York, in which he states that the following cases were recently decided in the United States circuit court of appeals, second circuit, adversely to the Government, the court affirming the decision of the United States circuit court below, without opinion: United States *v.* H. Herrmann (suit 3752); United States *v.* Saks & Co. (suit 3970); United States *v.* Leon Rheims Company (suit 3753).

The merchandise in suit was assessed with duty as partly made wearing apparel of wool under paragraph 370, and as fur hats under paragraph 432 of the tariff act. The importers protested, claiming the merchandise to be dutiable as manufactures of fur under paragraph 450 of the same act.

The Attorney-General advises the Department that no further proceedings will be had in these cases, and you are therefore hereby authorized to forward certified statements in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(35100.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28088.)

Mushrooms.

Decision of the United States circuit court of appeals, second circuit, Choy Chong Woh *v.* United States (T. D. 28053), acquiesced in.

TREASURY DEPARTMENT, *April 13, 1907*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, in which he reports that the case of Choy Chong Woh *v.* United States (suit 4165; T. D. 28053) was recently decided in the United States circuit court of appeals, second circuit, adversely to the Government.

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The merchandise in suit consisted of mushrooms dried and packed in large tin-lined cases, hermetically sealed, and containing from 30 to 45 pounds each. Duties were assessed thereon at the rate of 25 per cent ad valorem as vegetables in their natural state, not specially provided for, under paragraph 257 of the act of July 24, 1897, and the court sustained the importer's claim that the mushrooms were properly dutiable at the rate of 2½ cents per pound under paragraph 241 of the same act as "mushrooms prepared, or preserved in tins, jars, bottles, or similar packages."

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward a certified statement in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(7782.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28089.)

Special quarantine regulations for fruit vessels.

[Circular No. 27.]

TREASURY DEPARTMENT, *April 15, 1907.*

To United States consular officers, masters and owners of vessels, collectors of customs, national, State, and local quarantine officers and others:

To permit vessels from foreign ports with perishable cargoes of fruit to enter southern ports in the United States, without detention, the following special regulations are promulgated, as provided in the general quarantine regulations of April, 1903, and will be enforced at the ports of departure, and on arrival.

These regulations are a concession to vessels engaged in the fruit trade and contain provisions for the conduct of such trade with safety, without injurious detention of the fruit at domestic quarantine stations. While the regulations are more stringent when yellow fever is reported at a fruit port, they do not impose an embargo on the fruit traffic. The success of the regulations, however, depends upon reliable information as to health conditions and prompt knowledge of the first appearance and subsequent cases of yellow fever at any port. Therefore, the Department reserves the right, when satisfied that information is being denied or withheld, to recall from the port the medical officer detailed thereto by authority of the President. In this event the issue of the special certificate required by these regulations would be impossible, and fruit vessels from a port from which the medical officer has been recalled will be subject to the general quarantine regulations requiring disinfection at the domestic station and detention of personnel six days thereafter.

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REGULATIONS TO BE ENFORCED AT FOREIGN PORTS SUSPECTED OF BEING INFECTED WITH YELLOW FEVER.

1. None of the crew shall be allowed to go on land except the captain or his representative, or both when absolutely necessary, who shall go only to enter and clear the vessel, and only in the day time.

2. No one from the shore shall visit the vessel except the quarantine officers, customs officers, and agent of the ship.

3. All laborers who may be taken on the ship for loading purposes must have no intercourse with the shore subsequent to their entry upon the vessel until their final discharge therefrom.

4. No intercourse is to be allowed with persons on shore, except as provided in the preceding paragraphs. All fruit intended for shipment on vessels lying at docks shall be graded and payment made for the same on shore or dock. Such operations should not await the arrival of the fruit on shipboard. Fruit brought alongside by small boats or lighters shall be graded and necessary payment made over ship's side.

5. All passengers must embark from the regular ports and must have been under the observation of the sanitary inspector of the United States for at least three days prior to the departure of the ship, and be provided with his certificate to that effect. Where passengers come from elevated and noninfectible points in the interior to coast towns for embarkation, they should not be required to pass the three-day period of observation in the latter places because of possible danger of developing malarial or other tropical fevers. They should be required to bring a certificate from the United States consul or a reliable physician, and the sanitary inspector shall satisfy himself that they have been at such elevated and noninfectible interior points for three days immediately preceding their arrival at coast towns.

6. Special attention should be paid to the sanitary condition and history of passengers arriving, directly or indirectly, from the Pacific coast towns of Central America.

7. All outgoing vessels must be provided with a bill of health in accordance with the law, and, in addition thereto, certificates in duplicate, signed by the medical officer attached to the consulate, giving the name of the ship, her master, the number of crew, a list of passengers, their sanitary condition, their ultimate destination in the United States, and stating the health condition of the port and surrounding country, of the ship and her crew, with any other pertinent information; also certifying that the vessel has complied with all the requirements of this circular for the port of departure. This certificate shall be attached to the bill of health and the duplicate to the duplicate bill of health, and shall be the evidence of compliance with the above requirements on which the vessel, arriving with a good sanitary history and in good sanitary condition, may be

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admitted to entry, without the usual disinfection and detention in quarantine. Holds of such vessels should be disinfected with sulphur, after discharge of cargo, when deemed necessary.

REGULATIONS TO BE ENFORCED AT FOREIGN PORTS INFECTED WITH YELLOW FEVER.

8. The foregoing rules and regulations shall apply also to vessels engaged in the fruit trade between foreign ports infected with yellow fever, or where yellow fever prevails, and ports of the United States, and are the special regulations provided for in paragraph 69, Exception B, of the quarantine regulations for domestic ports, April 1, 1903. Attention is called to the further requirement that these vessels shall carry no passengers, and also to the general regulations to be observed at all foreign ports where yellow fever prevails with regard to vessels leaving for the United States or its dependencies.

9. The vessel shall not lie where her crew will be exposed to the danger of contracting yellow fever, and at ports where the vessels lie at wharves the vessel must be moved into the stream or at least 200 meters from the wharf before sunset, and not returned to the wharf before sunrise the following day, except at ports where previous permission has been obtained from the Bureau.

10. Water tanks, water buckets, and other collections of water about the vessel must be guarded in such manner that they shall not become breeding places for mosquitoes. The destruction of mosquitoes aboard must be insured as far as possible by the simultaneous fumigation—2 pounds of sulphur per 1,000 cubic feet, all openings closed for two hours—of all compartments which can be so treated without injury to the cargo. Pyrethrum powder, taking care to sweep up and destroy the mosquitoes, may be substituted in the engine room at the option of the medical officer.

11. The vessel should sail immediately after this fumigation is completed.

12. All baggage should be rigidly inspected and the exclusion of mosquitoes assured.

NOTE.—While the foregoing are specific regulations for fruit vessels, it should be borne in mind that they relate only to yellow fever, and that in the event of an outbreak of any other quarantinable disease at the port of departure, the general quarantine regulations for diseases other than yellow fever, approved April 1, 1903, should be enforced on these fruit vessels.

REGULATIONS TO BE ENFORCED AT SOUTHERN PORTS OF THE UNITED STATES.

13. Fruit vessels plying between United States ports and *fruit ports* where yellow fever is *known* to exist will not be given pratique under the provisions of these special regulations until they have been not less than six days from the port of departure.

14. Whenever the master or agent of the vessel so desires, the following alternative to paragraph 13 is offered:

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a. Fruit vessels from ports where yellow fever is known to exist will be permitted to enter as soon as the crew, except the master, first mate, and chief engineer, shall have been removed from the vessel and placed in quarantine at the station and the living quarters of the vessel thoroughly fumigated. The quarantine officer shall certify the number of the crew removed and shall compare and verify the same with the bill of health of the vessel. The vessel may then be released and either towed to the city docks or a new crew will be permitted to be placed on board.

b. The new crew may either leave the ship at the dock or return with the vessel to the quarantine station, but if for any sanitary reason their detention on the vessel at the dock or return on the same vessel to the quarantine station should be deemed necessary by the quarantine officer or the Service representative in the city such detention or return shall be required.

c. The crew detained at the quarantine station may be released at the expiration of six days from the infected port or six days from their last possible exposure to infection. If for any reason the quarantine officer deems it necessary to detain them longer, this may be done. After release the crew may be permitted to proceed to the city to rejoin their vessel, or rejoin the vessel at the station on her outward trip.

d. Immediately after unlading at the dock all parts of the vessel shall be simultaneously fumigated for the destruction of mosquitoes with 2 pounds of sulphur per 1,000 cubic feet of space. After such fumigation lading for outgoing cargo may commence.

e. If the vessel departs without cargo the vessel may be fumigated en route to quarantine.

f. Two sets of quarters must be maintained at the quarantine station, one for the crews of incoming vessels and the other for such relief crews as may be employed by the companies, and both quarters shall be fumigated immediately after being vacated.

g. The requirements of these provisions, and each step and detail thereof, shall be certified by the proper quarantine officer before clearance papers are granted.

15. Fruit vessels without certificates of the United States sanitary inspectors at foreign ports shall be subject to the general quarantine regulations of the United States.

16. Persons exposed to infection in unloading cargo onto lighters shall be detained, after such exposure, as provided for other persons exposed to yellow fever.

17. Any officer of a fruit vessel detected in evading or violating these special regulations shall forfeit, for any vessel upon which he may subsequently be found, or be engaged, any participation in the special privileges accorded by these regulations.

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18. Fruit vessels trading with any ports infected with yellow fever must carry a competent, qualified physician.

19. Fruit vessels arriving with yellow fever on board, or having had yellow fever on board during the voyage, shall be placed in quarantine. The personnel shall be removed, with the exception of the master, first mate, and engineer, the living apartments thoroughly disinfected, the vessel provided with a new crew sufficient to care for her, and towed, or proceed under her own steam, to the docks for discharge of cargo. All officers and crew shall be detained on board, under guard, until the completion of the discharge of cargo, while the vessel is at the dock and until the return of the vessel to the quarantine station. Immediately upon the completion of the discharge of cargo, the holds shall be fumigated with sulphur and the vessel shall be returned to the quarantine station and permitted to take on her crew before proceeding to sea.

20. This circular supersedes all previous Department circulars relating to special quarantine regulations for fruit vessels.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28090.)

Drawback on sulphur bitters.

Drawback on Doctor Kaufmann's sulphur bitters manufactured by A. P. Ordway & Co., of New York City, with the use of imported alcohol.

TREASURY DEPARTMENT, *April 15, 1907.*

SIR: On the exportation of Doctor Kaufmann's sulphur bitters manufactured by A. P. Ordway & Co., of New York City, with the use of imported alcohol only, a drawback will be allowed equal in amount to the duty paid on the imported alcohol so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the number and nominal size of the bottles contained in each package separately and in the entire shipment.

The drawback entry must show the quantity of bitters exported, the quantity of absolute alcohol contained therein, and the quantity of absolute alcohol used in the manufacture thereof. In addition to the usual averments, said entry must show that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement and schedule attached thereto, dated March 5, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of absolute alcohol which may be taken as the basis for the allowance of drawback may equal the quantities

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declared in the drawback entry after official verification of exported quantities and analysis, provided it shall not exceed that shown in said schedule as contained in the exported bitters, with an allowance for wastage not to exceed that also specified in said sworn schedule.

Samples may be taken or sworn samples furnished as ordered by the collector for official determination.

These regulations are in lieu of Department's regulations of October 20, 1899.

Respectfully, JAMES B. REYNOLDS,
(45946.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28091.)

Mushrooms.

Decision of United States circuit court of appeals, second circuit, in A. Zanmati *v.* United States (T. D. 28054), holding mushrooms cleaned, sliced, and dried in the sun to be dutiable as vegetables in their natural state, acquiesced in.

TREASURY DEPARTMENT, *April 16, 1907.*

SIR: The Department is in receipt of a report of the United States attorney, in which he states that the case of A. Zanmati & Co. *v.* United States (suit 4176; T. D. 28054) was recently decided in the United States circuit court of appeals for the second circuit adversely to the Government.

The merchandise in suit consisted of mushrooms, cleaned, sliced, dried in the sun and imported in barrels. Duties were assessed under paragraph 241 of the tariff act of July 24, 1897, at 40 per cent ad valorem under the enumeration for vegetables prepared or preserved not specially provided for. The importers protested, claiming the merchandise to be dutiable at 25 per cent ad valorem as vegetables in their natural state, not specially provided for under paragraph 257 of the same act, which claim was sustained by the United States circuit court of appeals in this case, the court holding that the slicing of the mushrooms only, in order to facilitate the natural drying operation, did not take them out of the category of "vegetables in their natural state."

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(7782.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28092.)

Drawback on borsalite.

T. D. 26321 and T. D. 26532 of April 26 and June 24, 1905, respectively, extended to borsalite manufactured by Thos. Thorkildsen & Co., of Chicago, Ill., with the use of imported borax, and to exported articles in connection with which such borsalite is used.

TREASURY DEPARTMENT, *April 16, 1907.*

SIR: The Department's instructions of April 26, 1905 (T. D. 26321), and June 24, 1905 (T. D. 26532), establishing, respectively, a rate for the allowance of drawback on protegit, and on exported articles in connection with which such protegit is used, are hereby extended, so far as applicable, to cover, respectively, borsalite manufactured by Thos. Thorkildsen & Co., of Chicago, Ill., with the use of imported borax, and articles in connection with which such borsalite is used, in accordance with the manufacturers' sworn statement, dated December 5, 1906, transmitted herewith for filing in your office.

In the liquidation of the entries, the quantity of crystal borax, in the condition as imported, which may be taken as a basis for allowance of drawback in the exported article, may equal the quantity consumed, as declared in the drawback entry, after official verification of the exported quantity, but in no case should it exceed 98 per cent of the weight of the borsalite exported.

Respectfully, JAMES B. REYNOLDS,
(28684.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 28093.)

Drawback on risax.

T. D. 26321 and T. D. 26532 of April 26 and June 24, 1905, respectively, extended to risax manufactured by North Packing and Provision Company, of Somerville, Mass., with the use of imported borax, and to exported meats treated with such risax.

TREASURY DEPARTMENT, *April 16, 1907.*

SIR: The Department's instructions of April 26, 1905 (T. D. 26321), and June 24, 1905 (T. D. 26532), establishing, respectively, a rate for the allowance of drawback on protegit, and on exported articles treated with such protegit, are hereby extended, so far as applicable, to cover, respectively, risax manufactured by the North Packing and Provision Company, Somerville, Mass., in part with the use of imported borax, and meats treated with such risax, in accordance with the manufacturers' sworn statements, dated November 17, 1906, transmitted herewith for filing in your office.

In liquidations, the quantity of refined crystal borax, in the case of risax exported, and of risax, in the case of meats exported, shall

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not exceed, for drawback purposes, respectively, 95 per cent of the net weight of the risax exported and 1.01 pounds of risax to each 100 pounds of meat exported.

Respectfully, JAMES B. REYNOLDS,
(18026.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28094.)

Common carrier.

Approving bond of the Wilmington and New York Transportation Company for the transportation of unappraised merchandise from New York.

TREASURY DEPARTMENT, *April 16, 1907.*

SIR: The Department hereby approves the bond of the Wilmington and New York Transportation Company, transmitted by the collector at Wilmington, Del., on the 12th instant, for the transportation of unappraised merchandise from New York to Wilmington, Del., and transmits herewith one copy of the bond for the files of your office.

The carrier named is authorized under this bond to transport unappraised merchandise from New York to Wilmington, Del., in suitable American vessels owned or controlled by it and plying on the waters of New York Bay, the Atlantic Ocean, Delaware Bay, and Delaware River, and in cars running on such connecting lines of railroads as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(44350.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28095.)

Common carrier.

Approving bond of the Wilmington and New York Transportation Company for the transportation of appraised merchandise from New York to Wilmington, Del., and vice versa.

TREASURY DEPARTMENT, *April 16, 1907.*

SIR: The bond of the Wilmington and New York Transportation Company, transmitted with your letter of the 12th instant, for the transportation of appraised merchandise between New York and Wilmington, Del., is hereby approved, and one copy of the bond is transmitted herewith for the files of your office.

The carrier named is authorized, under this bond, to transport appraised merchandise from New York to Wilmington, Del., and vice versa, in suitable American vessels owned or controlled by it

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and plying on the waters of New York Bay, Atlantic Ocean, Delaware Bay, and Delaware River, and in cars running on such connecting lines of railroads as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

The bond of the carrier for the transportation of unappraised merchandise from New York to Wilmington, Del., has been approved and one copy of that bond transmitted to the collector at New York for the files of his office.

Respectfully, JAMES B. REYNOLDS,
(44350.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Wilmington, Del.*

(T. D. 28096.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15028.—WILLOW BASKETS.—Protest 227170-23778 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 10, 1907. Opinion by McClelland, G. A.

The protest related to so-called baby-linen baskets, classified as manufactures of willow under paragraph 206, tariff act of 1897, and claimed to be composed in chief value of chip, grass, straw, or wood. Protest overruled.

No. 15029. — WOOD BASKETS.—Protests 230742-23845, etc., of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 10, 1907. Opinion by McClelland, G. A.

The protests related to baskets made of wood, palm, and wood shavings, with the addition of silk in some instances. The importers contended that they had been improperly classified as manufactures of wood under paragraph 208, tariff act of 1897, and should have been classified as manufactures in chief value of straw under paragraph 449. Protests overruled.

No. 15030.—PRINTED MATTER — WANDSPRUCHE — CALENDARS AND BLOCKS.—Protest 227147-23439 of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 10, 1907. Opinion by Fischer, G. A.

So-called wandspruche, consisting of scriptural texts on heavy cardboard, partly printed and partly sprayed, were held to have been properly classified as printed matter under paragraph 403, tariff act of 1897. Calendars with blocks therefor, which were classified as manufactures of paper under paragraph 403, tariff act of 1897, were held by the Board to constitute entireties in which the lithographic printing is the predominant feature, and to be dutiable as lithographic prints under paragraph 400. This contention not being made by the importers in their protest, the assessment was affirmed.

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No. 15031.—Ribbons.—Protests 42065*f*, etc., of Spiegelberg & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 10, 1907. Opinion by Howell, G. A.

On the authority of G. A. 5876 (T. D. 25866), the protests were sustained as to a portion of the goods, consisting of gauze ribbons, which were held dutiable as manufactures of silk under paragraph 391, tariff act of 1897.

No. 15032.—Silk Veilings.—Protest 231286 of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, April 10, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under paragraph 390, tariff act of 1897, as silk veilings.

No. 15033.—Marrons in Sirup—Dutiable Weight.—Protests 67076*f*, etc., of L. Sherry *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 10, 1907. Opinion by Waite, G. A.

On the authority of Schall *v.* United States (T. D. 27985), the Board held marrons in sirup to have been properly classified under paragraph 263, tariff act of 1897, relating to sweetmeats, etc. On the authority of G. A. 6276 (T. D. 27058), the Board overruled the importers' further contention that the weight of the sirup should not have been included in the dutiable weight of the marrons.

No. 15034.—American Goods Returned—Bags.—Protest 227227 of E. S. Halsted & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 10, 1907. Opinion by Somerville, G. A.

Certain bags were held free of duty under paragraph 483, tariff act of 1897, relating to American goods returned.

No. 15035.—Pulp—Ground Screenings.—Protests 225507, etc., of Sault Ste. Marie Pulp and Paper Company against the assessment of duty by the collector of customs at the port of Marquette. Before Board 3, April 10, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of Abstract 14559 (T. D. 27945), relating to pulp (ground screenings).

No. 15036.—Dutiable Weight of Tobacco.—Protests 218004, etc., and protests 232539, etc., of American Cigar Company *et al.*, and protests 234480, etc., of A. Cohn & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 10, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 15037.—Petroleum Products.—Protests 229789, etc., of F. A. Marsily & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 10, 1907. Opinion by Hay, G. A.

G. A. 6405 (T. D. 27507) followed, relating to petroleum products. The importers' contentions were sustained as to the product of petroleum from Belgium and England, and overruled as to the product of petroleum from British India.

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No. 15038.—SHORTAGE.—Protests 210681, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, April 10, 1907. Opinion by Hay, G. A.

The Board allowed a claim of the importers for shortage of portions of the importations in question

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No. 15039.—PROTESTS ABANDONED.—Protest 194936 of Hunken, Neale & Forbes and protests 229702, etc., of A. Steinhardt & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 10, 1907. Opinions by Fischer, G. A.

Protests abandoned; overruled.

No. 15040.—PROTESTS ABANDONED.—Protests 229899, etc., of Jonas & Naumburg *et al.* Before Board 1. Opinion by McClelland, G. A.

Same as No. 15039 (*supra*).

No. 15041.—PROTESTS UNSUPPORTED.—Protest 234688 of Balch, Price & Co., protest 225334 of Bauman, Ludwig & Co., protest 213740 of Clement & Caluwaert, protest 229276 of D. G. Gardiner, protests 229899, etc., of D. G. Gardiner *et al.*, protest 230475 of Isler & Guye, protest 231096 of Lichtenstein Millinery Company, protests 120144, etc., of J. & H. Rosenberg, protests 198464, etc., J. & H. Rosenberg *et al.*, and protest 226385 of Siegman & Weil against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 10, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 15042.—PROTEST UNSUPPORTED.—Protest 224320-23352 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Opinion by Fischer, G. A.

Same as No. 15041 (*supra*).

No. 15043.—PROTEST UNSUPPORTED.—Protest 223539 of W. L. Gough. Before Board 3. Opinion by Hay, G. A.

Same as No. 15041 (*supra*).

No. 15044.—GLASS TUBING.—Protest 205817-21925 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 11, 1907. Opinion by Sharretts, G. A.

Glass tubing (biegrohren and cylinderrohren) was held dutiable as manufactures of glass under paragraph 112, tariff act of 1897, as claimed by the importers. G. A. 6533 (T. D. 27884) followed.

No. 15045.—CRUCIFIXES—LITHOGRAPHIC PRINTS COVERED WITH GLASS.—Protest 227364-23435 of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 11, 1907. Opinion of Sharretts, G. A.

Crucifixes of metal and wood were held to have been properly classified as manufactures of metal under paragraph 193, tariff act of 1897; and lithographic prints covered with glass were held to have been properly classified under paragraph 100, relating to glass painted, etc.

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No. 15046.—Lithographic Prints in Part of Chip.—Protests 227155-23789, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 11, 1907. Opinion by Fischer, G. A.

The protests related to articles made to imitate a basket of flowers, and composed chiefly of lithographic prints but in part of chip. The importers contended they had been improperly classified under paragraph 407, tariff act of 1897, as manufactures of paper, and that they should have been classified as lithographic prints under paragraph 400. The Board found the lithographic printing to be the predominant feature in the goods, and sustained the importers' contention. G. A. 4959 (T. D. 23169) and G. A. 6041 (T. D. 26370).

No. 15047.—Dirt in Nuts.—Protests 145687, etc., of Habicht, Braun & Co., and protests 175701, etc., of Havicht, Braun & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 11, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

No. 15048.—Dutiable Weight of Tobacco.—Protests 233232, etc., of A. Gonzalez & Co. *et al.* April 11, 1907.

Same as No. 15036 (*supra*).

No. 15049.—Protests Abandoned.—Protests 189720, etc., of Isler & Guye *et al.* and protests 195043, etc., of John Zimmermann Company. April 11, 1907.

Same as No. 15039 (*supra*).

No. 15050.—Protest Unsupported.—Protest 226498 of Kronfeld, Saunders & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 11, 1907. Opinion by Fischer, G. A.

Protest overruled for want of merit.

No. 15051.—Protests Unsupported.—Protests 227299, etc., of Lyon Brothers *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15050 (*supra*).

No. 15052.—Protest Unsupported.—Protest 232069 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3. Opinion by Hay, G. A.

Same as No. 15050 (*supra*).

No. 15053.—Protest Unsupported.—Protest 243120 of American Express Company against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15050 (*supra*).

No. 15054.—Dirt in Nuts.—Protests 158798, etc., of Reiss & Brady *et al.* April 12, 1907.

Same as No. 15047 (*supra*).

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No. 15055.—DUTIABLE WEIGHT OF TOBACCO.—Protest 233927 of A. Cohn & Co. April 12, 1907.

Same as No. 15036 (*supra*).

No. 15056.—BALATA.—Protests 192379, etc., of G. P. Shilstone *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 12, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of Earle *v.* United States (T. D. 27977), relating to balata.

No. 15057.—PIPES WITH BAMBOO STEMS.—Protests 224075, etc., of P. H. Petry & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 12, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of G. A. 6251 (T. D. 26966), relating to pipes with bamboo stems.

No. 15058.—PROTESTS ABANDONED —Protests 240107, etc., of Appel & Kleinmann *et al.* Before Board 1, April 12, 1907. Opinion by McClelland, G. A.

Same as No. 15039 (*supra*).

No. 15059.—PROTEST UNSUPPORTED.—Protest 229586 of John V. A. Cattus against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 12, 1907. Opinion by Hay, G. A.

Protest overruled for want of merit.

No. 15060.—PROTEST UNSUPPORTED.—Protest 227363 of John V. Farwell Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15059 (*supra*).

No. 15061.—PROTESTS UNSUPPORTED.—Protests 229694, etc., of C. Schmitz & Co. *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 15059 (*supra*).

(T. D. 28097.)

Niger-seed oil.

Decision of the United States circuit court of appeals, second circuit, United States *v.* Colby (T. D. 28078), acquiesced in.

TREASURY DEPARTMENT, *April 18, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, in which he states that the case of United States *v.* Colby & Co. (suit 3967; T. D. 28078) was recently decided in the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in suit consisted of certain "niger-seed oil," which was assessed with duty under paragraph 3 of the tariff act of

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1897 at the rate of 25 per cent ad valorem, and was claimed by the importers to be entitled to free entry under paragraph 568 of the same act, which claim was sustained by the United States circuit court of appeals.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are hereby authorized to forward a certified statement in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(26007.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28098.)

Drawback on Dr. Kilmer & Co.'s remedies.

Drawback on Swamp-Root, Kidney, Liver, and Bladder Remedy, Ocean-weed Heart Remedy, Female Remedy, Indian Cough Cure, and Autumn-leaf Extract manufactured by Dr. Kilmer & Co., of Binghamton, N. Y., with the use of imported alcohol and refined sugar made from imported raw sugar.

TREASURY DEPARTMENT, *April 19, 1907.*

SIR: On the exportation of medicinal preparations known as Swamp-Root, Kidney, Liver, and Bladder Remedy, Ocean-weed Heart Remedy, Female Remedy, Indian Cough Cure, and Autumn-leaf Extract manufactured by Dr. Kilmer & Co., of Binghamton, N. Y., with the use of imported alcohol and refined sugar made from imported raw sugar, a drawback will be allowed equal in amount to the duties paid on the alcohol and sugar so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the contents of each separately and in the aggregate.

The drawback entry must show the total number of bottles of nominal sizes of each kind of preparation exported and the quantity of imported alcohol by volume and the quantity of cane sugar by weight contained therein, and the quantities of each consumed in the manufacture, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 7, 1907, and schedule attached thereto, transmitted herewith for filing in your office.

In liquidation, the quantities of imported alcohol and refined sugar made from imported raw sugar which may be taken as the bases for the allowance of drawback may equal the quantities declared in the drawback entry after official verification of exported quantities, provided that in no case shall they exceed the quantities shown in said sworn schedule.

Respectfully, JAMES B. REYNOLDS,
(46013.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28099.)

Drawback on firearms.

Drawback on the exportation of firearms manufactured by the J. Stevens Arms and Tool Company, of Chicopee Falls, Mass., with the use of imported gun barrels.

TREASURY DEPARTMENT, *April 19, 1907.*

SIR: On the exportation of firearms manufactured by the J. Stevens Arms and Tool Company, of Chicopee Falls, Mass., with the use of imported gun barrels, a drawback will be allowed equal in amount to the duty paid on the gun barrels so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the contents of each package separately and in the aggregate.

The drawback entry must show the total number of each kind of guns exported and the total number of imported barrels contained therein, describing said barrels as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 27, 1907, transmitted herewith for filing in your office.

In liquidation, the number of imported barrels which may be taken as the basis for the allowance of drawback may equal the number declared in the drawback entry after official verification of exported quantities, provided it shall not exceed two for each gun exported.

Respectfully, JAMES B. REYNOLDS,
(46101.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28100.)

Ferrochrome, etc.

Ferrochrome, ferrotungsten, ferromolybdenum, and ferrovanadium dutiable at 20 per cent ad valorem under paragraph 183, tariff act of 1897.

TREASURY DEPARTMENT, *April 20, 1907.*

SIR: Referring to your letter of January 26 last, and to subsequent correspondence, the Department hereby authorizes you to classify ferrochrome, ferrotungsten, ferromolybdenum, and ferrovanadium under paragraph 183 of the tariff act of July 24, 1897, at 20 per cent ad valorem.

Respectfully, JAMES B. REYNOLDS,
(17178.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Baltimore, Md.*

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(T. D. 28101.)

Supervision, assignment, and signing of official matter and conduct of the public business in and under the Treasury Department.

[Circular No. 28.]

TREASURY DEPARTMENT, *April 23, 1907.*

To heads of bureaus and offices, Treasury Department, and chiefs of divisions, Secretary's office, Treasury Department:

Hereafter all official communications, and matter of any kind or character prepared for signature of the Secretary which relates to the personnel of any service outside of the District of Columbia under the control of this Department, must be referred or forwarded to the Assistant Secretary in charge of the service, bureau, office, or division to which the subject-matter contained therein is assigned before the same is sent to the Secretary for signature or action.

Hereafter official communications, other than those making appointments, removals, changes in the personnel of the Department, and modifications of methods of conducting business (except those which by law require the signature of the Secretary of the Treasury) will be signed by the Assistant Secretary to whom is assigned the business of the bureau, office, or division to which the subject-matter relates. The Secretary of the Treasury will sign all letters addressed to the President, the Vice-President, the members of the Cabinet, and to the Congress or its committees, and all regulations and general instructions affecting the public service. Assistant Secretaries are hereby authorized to sign orders and approve vouchers for purchases payable from appropriations for contingent expenses.

The following is the assignment of business to the Assistant Secretaries:

Hon. JAMES B. REYNOLDS, *Assistant Secretary.*—To Assistant Secretary Reynolds is assigned the general direction and supervision of all matters pertaining to the Customs Service and all matters relating to the public business assigned to the following divisions: The Division of Customs and the Division of Special Agents.

Hon. JOHN H. EDWARDS, *Assistant Secretary.*—To Assistant Secretary Edwards is assigned the general direction and supervision of all matters relating to the public business assigned to the following bureau, office, and divisions: The Office of the Director of the Mint; the Bureau of Engraving and Printing; the Secret-Service Division; the Division of Public Moneys; the Division of Loans and Currency; the Division of Bookkeeping and Warrants; the Division of Printing and Stationery, and the Division of Mail and Files. All official communications relating to or making appointments, removals, or changes in the compensation of the personnel of the Department and services under its control in the District of Columbia.

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Hon. BEEKMAN WINTHROP, *Assistant Secretary.*—To Assistant Secretary Winthrop is assigned the general direction and supervision of all matters relating to the public business assigned to the following bureau, offices, and divisions: The Office of the Supervising Architect; the Office of the Chief Clerk and Superintendent; the Office of Internal Revenue; the Bureau of Public Health and Marine-Hospital Service of the United States; the Office of the Life-Saving Service, and the Division of Revenue-Cutter Service.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28102—G. A. 6577.)

Fur waste.

Merchandise variously returned by the appraiser as "fur waste," "waste rabbit fur," and "fur not on the skin prepared for hatters' use," *Held* to be dutiable at the rate of 10 per cent ad valorem under the provisions of paragraph 463, tariff act of 1897, as waste not specially provided for.—Abstract 11309 (T. D. 27363) reversed; United States *v.* Hatters' Fur Exchange (T. D. 27971) followed.

United States General Appraisers, New York, April 22, 1907.

In the matter of protests 190423, etc., of H. & A. Chapal Frères & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise to which these protests relate was returned by the appraiser as "fur waste," "waste rabbit fur," or "fur not on the skin prepared for hatters' use." Duty was assessed on the same either at the rate of 20 per cent ad valorem under paragraph 426, or at 10 per cent ad valorem under paragraph 463, tariff act of 1897. Protestants claim the merchandise is entitled to free entry under paragraph 561, 562, 571, 572, or paragraph 664, and alternatively that duty should have been assessed at the rate of 10 per cent ad valorem under the provisions of paragraph 463 of said act. Other claims for rates of duty lower than those assessed are also made.

Merchandise similar to that under consideration was the subject of Abstract 11309 (T. D. 27363), from which we quote the following:

A question similar to that here involved was passed upon in G. A. 6246 (T. D. 26955), the only distinction being that it was shown that the merchandise which was the subject of said G. A. 6246 was dead fur which dropped from rabbit skins which had been baled and become heated; while the furs here involved are shown to be the result of a combing process, and of a somewhat higher grade, but still unfitted for use in hat making except as an adulterant.

In that case the Board held that the fur was entitled to free entry under paragraph 561. The Government took an appeal, however, to the United States circuit court, southern district of New York,

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United States *v.* Hatters' Fur Exchange (suit 4266), and the court held that the action of the collector in assessing duty at the rate of 20 per cent under paragraph 426 and the findings of the Board were erroneous and that the article was "waste not specially provided for," dutiable at the rate of 10 per cent ad valorem under paragraph 463 (T. D. 27971).

Following the ruling of the court, which has been acquiesced in by the Treasury Department (T. D. 28027), these protests in so far as they claim under paragraph 463 are sustained; in all other respects they are overruled and the decisions of the collector modified accordingly.

(T. D. 28103—G. A. 6578.)

Beaded articles—Bags composed in part of beads.

1. A provision in the tariff for a designated article is more specific for classification purposes than a provision for a material.

2. Bags and purses composed of a cotton or silk foundation, the exterior surface of the fabric covered more or less completely with beads and fitted with a metal frame and chain, are dutiable at 60 per cent ad valorem under paragraph 408, tariff act of 1897, and not under paragraph 193, although metal is the component material of chief value in the completed articles.

United States General Appraisers, New York, April 22, 1907.

In the matter of protest 282060-24167 of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* This protest relates to beaded bags composed of a cotton fabric, cut and fashioned into shape, the exterior surface of the fabric being covered with glass beads, a metal frame with a chain attached thereto completing each bag.

Duty was assessed upon these goods at the rate of 60 per cent ad valorem under the provision of paragraph 408 for articles composed wholly or in part of beads, the importers claiming 45 per cent duty thereon under paragraph 193 of the tariff act of 1897, and citing T. D. 25316 and G. A. 6130 (T. D. 26653), G. A. 6322 (T. D. 27239), and G. A. 6374 (T. D. 27382) in support of their contention; but none of these decisions, as will be seen by reference thereto, is controlling in this case.

Investigation shows that the value of the beads is almost invariably less than that of the other component parts—cotton, silk, leather, or metal—usually entering into the composition of beaded bags. Based upon importations arriving at the port of New York, it appears that the foreign market value of beads unstrung is from 4 to 8 crowns per 100 bunches, each bunch containing 1,200 beads;

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hence it is manifest that even in extreme cases where the beads cover the entire surface of such bags, the beads will form only a small part of the cost of the completed articles.

The value of the silk or cotton fabrics forming the foundation of women's handbags, exclusive of the labor incident to sewing the beads thereon, is also comparatively small. On the other hand, the value of the metal rim and chain, which vary in price to correspond with the quality of the bag to which they are attached, is invariably greater than the other component parts thereof. The enhanced value of more expensive bags is due principally to the cost of sewing thereon diminutive seed beads fashioned into intricate and elaborate designs, and such labor is not an element of value in determining the cost of the component materials in the condition found in imported articles.

While it may be safely held that the metal is the component material of chief value in metal-framed bags and purses composed of silk, cotton, or other textile fabric ornamented with beads, this rule does not apply with equal force to expensive bags and purses composed of leather, metal, and beads. As to such articles, leather in many if not in most instances will be of more value than either of the other component parts.

It is an elementary principle in the construction of the tariff that a provision for a designated article is more specific than that for a material. Paragraph 408 provides for articles composed wholly or in part of *beads*, while that of paragraph 193 is for articles composed wholly or in part of *metal;* and as both paragraphs contain the words "not specially provided for," this phrase is eliminated from the issue. In the present case, although we find that metal is the component material of chief value in the bags in question, nevertheless in our opinion the articles are more specifically provided for in paragraph 408 than elsewhere in the tariff act.

The protest is accordingly overruled and the collector's decision assessing duty on the goods at 60 per cent ad valorem under paragraph 408 is affirmed.

(T. D. 28104.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15062.—CHEMICAL GLASSWARE.—Protests 49240 *b*, etc., of John M. Maris & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, April 13, 1907. Opinion by Sharretts, G. A.

The protests related to chemical glassware, classified under paragraph 100, tariff act of 1897, relating to blown glass, etc. It was claimed by the importers to be dutiable in part under paragraph 99 as bottles, and in part under paragraph 112 as manufactures of glass. These contentions were sustained as to certain items.

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No. 15063.—CURLED HUMAN HAIR.—Protest 230761-24134 of Chas. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 13, 1907.

The protest related to merchandise invoiced as curled hair and crimped hair, which was returned by the appraiser as bleached and curled and was classified under the provision in paragraph 450, tariff act of 1897, for manufactures of human hair. The importers contended that the merchandise should have been classified under the provision in paragraph 429 for "human hair, if clean or drawn but not manufactured."

McCLELLAND, *General Appraiser:* * * * The sample of the importation found with the papers consists of human hair which has been curled evidently for the purpose of preventing it from becoming snarled while being handled and transported. It does not appear from an examination of said sample that the merchandise has been subjected to such treatment as would constitute a manufacture within the meaning of the provisions of said paragraph 450. We therefore think the claim is well founded and sustain the protest.

No. 15064.—SILK NETTINGS—TULLE.—Protests 215454, etc., of H. Robinson against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by Howell, G. A.

The merchandise, which was classified as silk nettings under paragraph 390, tariff act of 1897, was claimed to be dutiable as silk fabrics under paragraph 387, or as manufactures of silk under paragraph 391, the importer alleging that the goods are known as tulle. Protests overruled.

No. 15065.—EMBROIDERY COTTON.—Protest 229581 of O. H. Blell against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified as embroidery cotton under paragraph 303, tariff act of 1897. Note G. A. 5936 (T. D. 26070).

No. 15066.—EMBROIDERIES—LACE.—Protests 229428, etc., of Lui Fong & Co. *et al.*, protests 230684, etc., of H. C. Rounds *et al.*, and protest 212774 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinions by De Vries, G. A.

The merchandise was held to have been properly classified under paragraphs 339 and 390, tariff act of 1897, relating to embroideries and lace.

No. 15067.—FIGURED COTTON CLOTH.—Protests 247778, etc., of B. Altman & Co. *et al.*, protests 244010, etc., of Arthur Geoffroy, protests 248154, etc., of Mills & Gibb *et al.*, and protest 141875 of H. Robinson against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinions by De Vries, G. A.

Protests overruled on authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15068.—FIGURED COTTON CLOTH.—Protests 246462, etc., of Alms & Doepke Company and protest 247722 of H. & S. Pogue Company against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 15067 (*supra*).

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No. 15069.—MANUFACTURES OF FLAX—MANUFACTURES OF COTTON.—Protests 225367, etc., of Freund, Foise & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The merchandise, which was classified in part under paragraph 346, tariff act of 1897, as flax fabrics weighing more than 4½ ounces per square yard, and in part under paragraph 322 as manufactures of cotton, was claimed by the importers to be dutiable under paragraph 346 as weighing less than 4½ ounces per square yard or under paragraph 322 or 347 as manufactures of cotton or of vegetable fibers, respectively. The first contention was sustained as to a portion of the goods covered by protest 227217.

No. 15070.—MANUFACTURES OF JUTE.—Protests 227958, etc., of D. W. MacLeod & Co. against the assessment of duty by the collector of customs of the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The goods, which were classified as composed in chief value of flax, were found to be composed chiefly of jute and held dutiable under paragraph 347, tariff act of 1897, as claimed by the importers.

No. 15071.—FLAX NOILS.—Protests 177274, etc., and protest 237565 of W. F. Corne against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, April 13, 1907. Opinions by De Vries, G. A.

Protests sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 15072.—ARTISTS' CANVAS.—Protest 230736-24110 of A. H. Abbott & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Artists' canvas painted on one side was held to have been properly classified under the provision in paragraph 346, tariff act of 1897, for flax fabrics weighing over 4½ ounces per square yard. The importers contended it was dutiable under paragraph 347 as manufactures of flax not specially provided for.

No. 15073.—MANUFACTURES OF COTTON.—Protest 230745-24130 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

So-called union lawns, classified as composed in chief value of cotton, were claimed to be composed chiefly of flax. Protest overruled.

No. 15074.—PASTE FIGURES.—Protests 225404, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Figures made of paste, standing under a canopy composed of cotton leaves, resting upon a paper base and covered with a glass shade, which were classified as manufactures of cotton under paragraph 322, tariff act of 1897, were claimed to be dutiable under section 6 as unenumerated manufactured articles. Assessment affirmed.

No. 15075.—COTTON YARN.—Protest 229892 of Einstein, Wolff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6544 (T. D. 27915), relating to cotton yarn.

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No. 15076.—Flax Fabrics.—Protest 212864 and protest 226277 of James F. White & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinions by De Vries, G. A.

Goods classified as manufactures of cotton under paragraph 322, tariff act of 1897, were claimed to be dutiable under paragraph 346 as flax fabrics weighing over 4½ ounces per square yard. Protest sustained.

No. 15077.—Cork Carpeting.—Protest 225960 of Gray Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Cork carpeting in strips 10 inches wide and 6 feet long was claimed by the importers to be dutiable as manufactures of cork under paragraph 448, tariff act of 1897. On the authority of G. A. 6444 (T. D. 27628), the Board held it to have been properly classified as cork carpeting under paragraph 337.

No. 15078.—Velvet-Covered Articles—Manufactures of Cotton.—Protest 206374 of D. Frohman against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The protest related to velvet-covered articles, such as writing pads, blotters, boxes, picture frames, etc. The Board held them to have been properly classified as manufactures of cotton under paragraph 322, tariff act of 1897.

No. 15079.—Chinese Shoes.—Protest 223729 of Kwong Yuen Shing against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Chinese shoes, classified as cotton wearing apparel under paragraph 314, tariff act of 1897, were claimed to be dutiable as shoes of leather under paragraph 488. Protest overruled. Note G. A. 4547 (T. D. 21587) and Abstract 4159 (T. D. 25916).

No. 15080.—Cotton Screens.—Protest 225234 of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The protest related to screens, which the Board held to have been properly classified in part as embroideries under paragraph 339, tariff act of 1897, and in part as manufactures of cotton. Note T. D. 27919.

No. 15081.—Flax Fabrics—Manufactures of Cotton.—Protests 225645, etc., of John McCann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

The goods were classified as manufactures of cotton under paragraph 322, tariff act of 1897, and as flax fabrics weighing more than 4½ ounces per square yard under paragraph 346, and were claimed to be dutiable under the latter paragraph as composed chiefly of flax and weighing less than 4½ ounces per square yard. Protests sustained as to a portion of the goods.

No. 15082.—Flax Fabrics—Manufactures of Cotton.—Protests 225654, etc., of Neuss, Hesslein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinion by De Vries, G. A.

Goods classified under paragraph 346, tariff act of 1897, as flax fabrics weighing over 4½ ounces per square yard, or under paragraphs 322 and 347 as manufactures of cotton, flax, etc., were claimed to be dutiable under paragraph 346 as composed chiefly of flax and weighing less than 4½ ounces per square yard. Protest 228131 was sustained in part.

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No. 15083.—Dutiable Weight of Tobacco.—Protests 223647, etc., of M. Atak & Co. *et al.* April 13, 1907.

Same as No. 15036 (T. D. 28096).

No. 15084.—Protests Abandoned.—Protests 229253, etc., of Cohn Brothers *et al.* and protests 221483, etc., of Fensterer & Ruhe *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 13, 1907.

Protests abandoned; overruled.

No. 15085.—Protests Abandoned.—Protests 159594, etc., of C. D. Bunker & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15084 (*supra*).

No. 15086.—Protests Unsupported.—Protests 227213, etc., of Louis Dejonge & Co., protest 225635 of T. J. Keveney & Co., protest 228956 of Knauth, Nachod & Kühne, protests 29844 *h*, etc., of H. Robinson *et al.*, protest 143011 of H. Robinson, protest 234724 of Schofield & Walter, and protest 219338 of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 13, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 15087.—Protest Unsupported.—Protest 232051 of T. Buettner & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15086 (*supra*).

No. 15088.—Leaf Tobacco.—Protest 246569 and protest 242727 of Calixto Lopez & Co., protests 231718, etc., of Cane Brothers, protest 231720 of B. Castellano & Co., and protest 224665 of United Cigar Manufacturers. Before Board 1, April 15, 1907. Opinions by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the various bales to contain the following percentages of filler tobacco and modified the collector's classification accordingly: Protest 246569: Bales 704 and 705, 100 per cent, and bale 651, 95 per cent. Protest 242727: Bale 488, 100 per cent; bales 524 and 578, 92 per cent; bale 563, 91 per cent: bales 412 and 414, 90 per cent, and bale 413, 89 per cent. Protests 231718, etc.: Bales 9528 and 9531, 92 per cent and bale 9534, 90 per cent. Protest 231720: Bales 560 and 562, 100 per cent. Protest 224665: Bales 4539 and 4544, 100 per cent.

No. 15089.—Antitoxins—Rat Virus.—Protests 195732, etc., of Thos. Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinion by Lunt, G. A.

The protests related to rat virus, classified as an unenumerated article under section 6, tariff act of 1897, and to tuberculin, tetanus sero-vaccine, streptococcus sero-vaccine, diphtheria antitoxin, streptococcus antitoxin, and tetanus antitoxin, classified as medicinal preparations under paragraph 68. Assessment affirmed on the authority of Abstract 14828 (T. D. 28036).

No. 15090.—Bromofluorescic Acid.—Protests 129520, etc., of Kuttroff, Pickhardt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinion by Lunt, G. A.

Protests overruled on the authority of G. A. 6566 (T. D. 28035), relating to bromofluorescic acid.

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No. 15091.—Paper Weights—Manufactures of Glass.—Protest 227351-23428 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 15, 1907. Opinion by Sharretts, G. A.

The articles in controversy, which were classified as manufactures of glass under paragraph 112, tariff act of 1897, were claimed to be dutiable as toys under paragraph 418. This merchandise consisted of paper weights composed of blown glass globes, which rest upon a china base and are filled with water containing miniature fish composed of red celluloid, and containing also a branch of an aquatic plant. The Board found these articles to be materially the same as the so-called snowstorm paper weights passed on in G. A. 4818 (T. D. 22650), and on the authority of that said decision affirmed the assessment.

No. 15092.—Hat Pins with Rhinestone Heads—Jewelry.—Protest 230748-24081 of Gage Brothers & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 15, 1907.

The articles in controversy, which were classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of paste under paragraph 112.

Sharretts, *General Appraiser:* The sample of the merchandise offered by the importers in this case represents a hat pin with a metal shaft and faceted glass or paste head, made to imitate jet. Were the goods in dispute of the same description, they would, if uncut, be dutiable at 45 per cent ad valorem under paragraph 112, as claimed in the protest. But the examiner who passed the goods testified that the sample submitted did not accurately represent the merchandise; and inspection of the invoice in question shows that the protestants have inadvertently submitted a wrong sample. The goods represented by items 5440-2 are described as "hat pins, steel stems, and black cut heads." The sample before us was most likely taken from this lot, which was assessed with duty at 45 per cent.

The articles invoiced as item 5439 and returned as "Jewelry-434-60 per cent" are described as "hat pins, gilt steel stems, and cut rhinestone heads." In G. A. 6139 (T. D. 26679) this Board passed upon the classification for duty of ordinary glass-head hat pins, and hat pins composed entirely of base metal made to imitate gold or silver, or such metal set with imitations of precious stones. Hence it follows that the second finding in said decision relates only to ordinary hat pins with *glass heads* and not with heads of wood, celluloid, earthenware, or other materials than glass or paste. Intelligent classifying officers have uniformly comprehended the scope of the decision, and as it was affirmed by the courts and acquiesced in by the Treasury Department, it is controlling.

The issue as to whether or not hat pins, with cut-glass or paste heads made to imitate jet, are dutiable under paragraph 100 was raised by the Treasury Department after the rendition of the decision of the court affirming G. A. 6139 (*supra*), and has not been passed on by the Board as yet. Collectors should, however, return such pins at 60 per cent ad valorem under paragraph 100, leaving the importers to their remedy by protest, as prescribed in section 14 of the customs administrative act.

In the present case we find the pins in question are commonly known as jewelry, similar to those included in finding of G. A. 6139 (*supra*). The protest is accordingly overruled and the decision of the collector affirmed.

No. 15093.—Olive Oil—Measurement.—Protest 242320 of F. P. Ventrone against the assessment of duty by the collector of customs at the port of Providence. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

The importer contended that the dutiable quantity of olive oil was not 1,000 gallons as assessed, but 971 gallons, allowing 7.56 pounds to the gallon. Protest sustained. Note G. A. 6416 (T. D. 27556) and T. D. 28002.

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No. 15094.—MOLDERS' PATTERNS.—Protests 229321, etc., of Algoma Iron Works *et al.* against the assessment of duty by the collector of customs at the port of Marquette. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6510 (T. D. 27798), relating to molders' patterns.

No. 15095.—MOLDERS' PATTERNS.—Protests 230903, etc., of National Malleable Castings Company against the assessment of duty by the collector of customs at the port of Cleveland.

Same as No. 15094 (*supra*).

No. 15096.—PROTEST BY UNAUTHORIZED PARTY.—Protest 230120 of Chas. W. Tindell against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

It appeared that the protest had been filed by an unauthorized party, and it was therefore dismissed.

No. 15097.—BASKETS.—Protests 227127-23283, etc., of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

The protests related to baskets classified in part as decorated earthenware under paragraph 95, tariff act of 1897, and in part as manufactures of wood under paragraph 208. The assessment was affirmed except as to the merchandise classified under paragraph 95, which, as claimed by the importers, was held dutiable as manufactures of wood under paragraph 208.

No. 15098.—SAWED LUMBER—IRON BARK—BLACK BUTT.—Protests 223616, etc., of C. D. Bunker & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1. April 15, 1907. Opinion by McClelland, G. A.

On the authority of G. A. 6137 (T. D. 26669), the Board held merchandise invoiced as iron bark and black butt to have been properly classified under paragraph 95, tariff act of 1897, as sawed lumber.

No. 15099.—PROTESTS INSUFFICIENT.—Protests 195594, etc., of New England Fur Company against the assessment of duty by the collector of customs at the port of Fall River. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

It appeared that the merchandise had been improperly classified, but as the importers failed to make the correct contention the protests were overruled.

No. 15100.—PREPARED LEAVES.—Protest 188125 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

The protest related to cycas and beech leaves, dyed and painted. The importers contended they had been improperly classified under paragraph 425, tariff act of 1897, relating to ornamental leaves. Assessment affirmed on the authority of Kreshower *v.* United States (T. D. 27826).

No. 15101.—PREPARED LEAVES.—Protests 177720-20356, etc., of G. W. Sheldon & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

Cycas and sago leaves, dyed and prepared, were held to have been properly classified under paragraph 425, tariff act of 1897, as ornamental leaves, etc. Kreshower *v.* United States (T. D. 27826) followed.

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No. 15102.—Rubber Solution—Unenumerated Article.—Protest 240767 of Kimmerle & Dawes against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

The merchandise in controversy, which was described by the appraiser as a solution of rubber, was classified as a manufacture of india rubber under paragraph 449, tariff act of 1897. On the authority of G. A. 1963 (T. D. 13769), the Board sustained the importers' contention that it should have been classified under section 6 as an unenumerated manufactured article.

No. 15103.—Gallilith.—Protest 243214 of E. Oppenheim against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of Abstract 11589 (T. D. 27393) and Abstract 11998 (T. D. 27458), relating to gallilith.

No. 15104.—Silk Nettings.—Protest 225536 of Jos. G. Darlington & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, April 15, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified as silk nettings under paragraph 390, tariff act of 1897.

No. 15105.—Flax Noils.—Protests 186568, etc., of Chas. H. Wood *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, April 15, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 15106.—Figured Cotton Cloth.—Protests 248728, etc., of Stern Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 15, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15107.—Embroidery Cotton.—Protests 125821, etc., of Marcel Schmitt *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 15, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified as embroidery cotton under paragraph 303, tariff act of 1897. Note G. A. 5936 (T. D. 26070).

No. 15108.—Protest Abandoned.—Protest 243816 of Strohmeyer & Arpe Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinion by Lunt, G. A.

Protest abandoned; overruled.

No. 15109.—Protests Abandoned—Protests 240741, etc., of Max Herman & Co. *et al.* Opinion by McClelland, G. A.

Same as No. 15108 (*supra*).

No. 15110.—Protests Abandoned.—Protests 216131, etc., of Samuel Schiff & Co. *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 15108 (*supra*).

No. 15111.—Protests Unsupported.—Protest 229922 of Lichtenstein Millinery Company, protest 245599 of G. Ponticelli & Co., and protests 242624, etc., of Schieffelin & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 15, 1907. Opinions by McClelland, G. A.

Protests overruled for want of merit.

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No. 15112.—PROTESTS UNSUPPORTED.—Protests 227365, etc., of Libby, McNeill & Libby *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15111 (*supra*).

No. 15113.—PROTESTS UNSUPPORTED.—Protests 234792, etc., of Leroy A. Flickinger against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 15111 (*supra*).

No. 15114.—PROTEST UNSUPPORTED.—Protest 234790 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15111 (*supra*).

No. 15115.—PROTESTS UNSUPPORTED.—Protest 217596 of C. D. Bunker & Co. and protest 232345 of R. S. Wheeler against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15111 (*supra*).

No. 15116.—PROTEST UNSUPPORTED.—Protest 223625 of Langley & Michaels Company against the assessment of duty by the collector of customs at the port of San Francisco. Opinion by Lunt, G. A.

Same as No. 15111 (*supra*).

No. 15117.—PROTESTS UNSUPPORTED.—Protests 230099, etc., of F. B. Vandegrift & Co. *et al.* Before Board 2. Opinion by Fischer, G. A.

Same as No. 15111 (*supra*).

No. 15118.—LEAF TOBACCO.—Protest 242323 of Berriman Brothers against the assessment of duty by the collector of customs at the port of Tampa.

Same as No. 15088 (*supra*), the percentages being as follows: Bale 112, 90 per cent; bale 114, 88 per cent, and bale 111, 86 per cent.

No. 15119.—CHIP BRAIDS CONTAINING THREADS.—Protest 202142 of J. &. H. Rosenberg against the assessment of duty by the collector of customs at the port of New York. Before Board 2. April 16, 1907. Opinion by Howell, G. A.

Chip braids containing thread were held to have been properly classified under paragraph 449, tariff act of 1897, as manufactures in chief value of chip. G. A. 6364 (T. D. 27343) followed.

No. 15120.—VELVET ARTICLES.—Protest 243136 of Acme Leather Goods Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 16, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly subjected to the additional duty provided in paragraph 315, tariff act of 1897, for articles made from velvet.

No. 15121.—COTTON HOSIERY.—Protest 227314–28758 of Wilson Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 16, 1907. Opinion by Howell, G. A.

The protest related to hosiery classified as composed in chief value of silk, and claimed by the importers to be composed chiefly of cotton. Protest sustained as to item 8931, case 1231, invoice 5034.

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No. 15122.—Flax Noils.—Protests 164298, etc., of Hughes Fawcett against the assessment of duty by the collector of customs at the port of New York. April 16, 1907.

Same as No. 15105 (*supra*).

No. 15123.—Dutiable Weight of Tobacco.—Protest 218041 of H. Duys & Co., protests 218378, etc., of B. Rosenwald & Bro. *et al.*, and protests 244381, etc., of M. F. Schneider *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 16, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 15124.—Dutiable Weight of Tobacco.—Protests 216156, etc., of Henry Miller's Sons *et al.* against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 15123 (*supra*).

No. 15125.—Dutiable Weight of Wool.—Protests 193111, etc., of J. J. Buchey & Co. *et al.*, and protests 136532, etc., of Carl Grubnau against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, April 16, 1907. Opinions by Somerville, G. A.

On the authority of United States *v.* Falk (T. D. 27832), the Board held wool to have been properly assessed with duty on the basis of its weight at the time of entry for warehouse.

No. 15126.—Protest Abandoned.—Protest 182279 of M. H. Frank & Co. Before Board 2, April 16, 1907. Opinion by De Vries, G. A.

Same as No. 15108 (*supra*).

No. 15127.—Protest Unsupported.—Protest 243186 of L. Dejonge & Co. Before Board 2, April 16, 1907. Opinion by De Vries, G. A.

Same as No. 15111 (*supra*).

No. 15128.—Celluloid Pins.—Protest 222333 of J. D. Gluck & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protest related to pins held to have been properly classified under paragraph 17, tariff act of 1897, as articles of celluloid.

No. 15129.—Metal Belts.—Protest 223527 of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907.

As claimed by the importers, the goods were found to be composed in chief value of metal and were held dutiable under paragraph 193, tariff act of 1897, relating to manufactures of metal.

Sharretts, *General Appraiser:* The merchandise covered by this protest is invoiced as metal sequin belts. * * * We find from the testimony and sample in evidence that said merchandise is women's belts composed of cotton elastic webbing, over the entire outer surface of which are sewed narrow wavy strips of very thin metal, about 1¼ inches in length and overlapping each other in rows laid at a right angle to the length of the belt. The effect produced is similar to that of a spangled article, but the metal strips are in no sense spangles.

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No. 15130.—Painted Lamps.—Protest 230894-23360 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6419 (T. D. 27759), small oil lamps were held to have been properly classified under paragraph 100, tariff act of 1897, relating to painted glassware, etc.

No. 15131.—Decorated Glassware and Earthenware.—Protest 230755-23384 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protest related to paper weights, inkstands, and puff boxes, which were held to have been properly classified under paragraphs 96 and 100, tariff act of 1897, relating, respectively, to earthenware and glassware decorated.

No. 15132.—Beaded Metal Bags.—Protest 222066 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protest related to women's hand bags composed of cotton and metal and ornamented with beads. The Board held them to have been properly classified as beaded articles under paragraph 408, tariff act of 1897.

No. 15133.—Toy Violins.—Protest 219617-23010 of R. Wurlitzer Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

Violins valued at 17 marks per dozen were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers. Abstract 7114 (T. D. 26543) followed.

No. 15134.—Cheap Violins.—Protests 219595-22935, etc., of Louis B. Mallachi & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The importers contended that violins, valued at 2 marks apiece and upward, were improperly classified as musical instruments under paragraph 453, tariff act of 1897, rather than as toys under paragraph 418. Assessment affirmed on the authority of G. A. 6417 (T. D. 27557).

No. 15135.—Toy Jewelry.—Protest 233248 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

A portion of the goods was held dutiable as toy jewelry under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 15136.—Celluloid Flowers.—Protest 231201 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The merchandise was classified as jewelry under paragraph 434, tariff act of 1897, and was claimed to be dutiable as artificial flowers under paragraph 425. Protest sustained as to a portion of the goods, consisting of celluloid flowers fitted with a metal pin.

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No. 15137.—Beaded Belts.—Protest 221755 of M. J. Corbett & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

Silk elastic belts ornamented with beads were held to have been properly classified under paragraph 408, tariff act of 1897, relating to beaded wearing apparel.

No. 15138.—Coral—Precious Stones.—Protest 175126 of Alex. Murphy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6482 (T. D. 27726), coral being held dutiable as a precious stone under paragraph 435, tariff act of 1897.

No. 15139.—Beaded Lamp Fringes.—Protests 112058, etc., of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6322 (T. D. 27239) lamp fringes were held to have been properly classified as beaded articles under paragraph 408, tariff act of 1897.

No. 15140.—Beaded Articles.—Protests 232059–23862, etc., of International Forwarding Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protests related to (1) beaded bags composed in chief value of cotton, (2) beaded wearing apparel (belts), and (3) beaded bags composed in chief value of metal. They were held to have been properly classified under paragraph 408, tariff act of 1897, relating to wearing apparel and other articles in part of beads, except the bags in chief value of cotton which, as claimed by the importers, were held to have been properly classified under paragraph 322 as manufactures of cotton.

No. 15141.—Fan Chains—Buckles.—Protest 106368 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

Fan chains, buckles, bags, purses, and belts were held dutiable as manufactures of the component material of chief value, as claimed by the importers. The remainder of the merchandise was held to have been properly classified under paragraphs 408 and 434, tariff act of 1897, relating to beaded articles and jewelry.

No. 15142.—Jewelry—Buckles.—Protest 110897 of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protest related to pins and buckles classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable as manufactures of glass or metal. Protest sustained as to the buckles.

No. 15143.—Hat Pins—Jewelry.—Protests 152710 of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharrretts, G. A.

Hat pins were held to have been properly classified as jewelry on the authority of G. A. 6139 (T. D. 26679), relating to hat pins and jewelry.

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No. 15144.—PINS—BEAD CHAINS.—Protest 112137 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

The protest related to pins with plain glass heads and to chains composed chiefly of beads. Protest sustained as to pins, which, on the authority of G. A. 6139 (T. D. (26679), were held dutiable as manufactures of glass under paragraph 112, tariff act of 1897.

No. 15145.—ORNAMENTS.—Protests 53708*f*, etc., of M. Goldberg *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6374 (T. D. 27382), relating to dress ornaments, a portion of the merchandise was held dutiable as manufactures of the component material of chief value, as claimed by the importers.

No. 15146.—ORNAMENTS—JEWELRY.—Protests 90153*f*, etc., of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

Certain ornaments (buckles, slides, and belts) were held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6374 (T. D. 27382) followed. Certain hat pins were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897. G. A. 6376 (T. D. 27390) followed.

No. 15147.—METAL PURSES.—Protest 97829*f* of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

On the authority of Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316), metal purses were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897.

No. 15148.—PURSES—ORNAMENTS—JEWELRY.—Protest 903*h* of A. D. Matthews' Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 17, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of metal purses and of millinery ornaments, was held dutiable as manufactures of the component material of chief value, as claimed by the importers. Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316) and G. A. 6130 (T. D. 26653).

No. 15149.—RIBBONS—BRAIDS.—Protests 55224*f*, etc., of Simpson, Crawford & Simpson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 17, 1907. Opinion by Howell, G. A.

A portion of the goods, consisting of gauze ribbons, was held dutiable as manufactures of silk under paragraph 391, tariff act of 1897, as claimed by the importers. G. A. 5937 (T. D. 26071) followed. The remainder of the goods was held to have been properly classified as braids.

No. 15150.—APPLIQUÉED GOODS.—Protest 218276 of S. Melon & Co. against the assessment of duty by the collector of customs at the port of San Juan. Before Board 2, April 17, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified as appliquéed articles under paragraph 339, tariff act of 1897. G. A. 4481 (T. D. 21375) followed.

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No. 15151.—MANUFACTURES OF COTTON—FLAX ARTICLES.—Protests 227360-23771, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 17, 1907. Opinion by De Vries, G. A.

The goods were classified in part under paragraph 322, tariff act of 1897, as manufactures of cotton and in part under paragraph 346 as flax articles weighing more than 4½ ounces per square yard. Assessment affirmed except as to a portion of the goods, which were held dutiable under said paragraph 346 as weighing less than 4½ ounces per square yard.

No. 15152.—FLAX PILE FABRICS.—Protest 227362-23775 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 17, 1907. Opinion by De Vries, G. A.

The protest related to pile fabrics, classified as composed in chief value of flax, and claimed by the importers to be composed chiefly of cotton. Protest overruled.

No. 15153.—DUTIABLE WEIGHT OF TOBACCO.—Protests 241231, etc., of F. R. Rice Mercantile Cigar Company *et al.* and protests 223067, etc., of United Cigar Manufacturers *et al.* April 17, 1907.

Same as No. 15123 (*supra*).

No. 15154.—DUTIABLE WEIGHT OF WOOL.—Protests 59868 *b*, etc., and protests 124629, etc., of Carl Grubnau and protests 59872 *b*, etc., of Alex. Murphy & Co. *et al.* April 17, 1907.

Same as No. 15125 (*supra*).

No. 15155.—PROTEST ABANDONED.—Protest 178451 of China Trading Company. April 17, 1907. Opinion by Sharretts, G. A.

Same as No. 15108 (*supra*).

No. 15156.—PROTESTS UNSUPPORTED.—Protests 229112, etc., of Bailey, Green & Elger *et al.*, protests 243734, etc., of Fisher & Thompson *et al.*, and protests 237618, etc., of Jos. Koehler *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 17, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 15157.—PROTEST UNSUPPORTED.—Protest 35041 *f* of H. Wolff & Co. Before Board 1. Opinion by Sharretts, G. A.

Same as No. 15156 (*supra*).

No. 15158.—DRUMHEADS.—Protest 221950-23331 of Lyon & Healy against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 18, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Lyon *v.* United States (T. D. 25832), relating to drumheads.

No. 15159.—LITHOGRAPHIC PRINTS.—Protest 243805 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 18, 1907. Opinion by Fischer, G. A.

The protest related to show cards, which the Board held to have been properly classified as lithographic prints under paragraph 400, tariff act of 1897.

No. 15160.—WALL HANGINGS.—Protest 242562 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 18, 1907. Opinion by De Vries, G. A.

Protest sustained on the authority of Abstract 13121 (T. D. 27655) and Abstract 13435 (T. D. 27719), relating to wall hangings.

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No. 15161. — EMBROIDERED ARTICLES. — Protest 243372 of Knauth, Nachod & Kühne against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 18, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly classified as embroidered articles under paragraph 339, tariff act of 1897.

No. 15162.—MANUFACTURES OF COTTON.—Protest 231962 of M. Gardner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 18, 1907. Opinion by De Vries, G. A.

Articles classified as manufactures of cotton were claimed to be composed in chief value of flax. Assessment affirmed.

No. 15163.—FLAX FABRICS.—Protest 232176 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 18, 1907. Opinion by De Vries, G. A.

Flax fabrics classified under paragraph 346, tariff act of 1897, as weighing more than 4½ ounces per square yard, were claimed by the importers to have weighed less than 4½ ounces per square yard. Assessment affirmed.

No. 15164.—WOOL WASHING RESIDUE.—Protest 225679 of H. G. McKerrow Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, April 18, 1907.

The protest related to material invoiced as wool washing residue, which was classified under the provision in section 6, tariff act of 1897, for articles "manufactured, in whole or in part." It was claimed by the importers to be dutiable under the provision in the same paragraph for "raw or unmanufactured articles, not enumerated." Protest overruled.

HAY, *General Appraiser:* * * * The appraiser reports that the merchandise "consists of the residue of the potash liquor suds obtained after wool washing, which have been evaporated and to which about 15 per cent of creosote oil has been added. The residue contains 53.77 per cent water, 10.45 per cent potassium carbonate, 1.35 per cent dirt, and the remainder a mixture of fats and creosote oil."

At the hearing the importer testified that the commodity is used for laying the dust on boulevards or macadamized roads; that it is a by-product obtained from the suds used in scouring wool; that the suds contain grease, potash, water, and dirt; that, by a process of evaporation, the water is driven off in the form of steam, getting back in the form of distilled water; that the grease is separated by centrifugal machines, and the residue is then potash liquor to which a small percentage of creosote is added as a deodorant.

From the testimony, which was not taken before the Board to which the case is referred for decision, there is apparently a little doubt as to whether the process above is gone through for the express purpose of producing the article imported; but such would seem to be the proper conclusion to draw from the testimony as reported. The question as to what is and what is not a manufactured article has been the subject of many decisions of both the Board and the courts; it is essentially one upon which no general principle can be laid down that will fit every case. Each case must be determined upon the facts presented. The evaporation of the wool washings and the separation of the components of the residuum by a centrifugal machine, together with the addition of the creosote, we think, constitute the commodity in question a manufactured article.

No. 15165.—DIRT IN NUTS.—Protests 213829, etc., of Habicht, Braun & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 18, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

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No. 15166.—PROTEST ABANDONED.—Protest 242656 of Geo. Ehrat & Co. against the assessment of duty by the collector of customs at the port of Chicago. April 18, 1907.

Same as No. 15108 (*supra*).

No. 15167.—PROTESTS UNSUPPORTED.—Protest 229905 of Holcombe & Co. and protest 57581*f* of Samstag & Hilder Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 18, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 15168.—PROTEST UNSUPPORTED.—Protest 219379 of Mattoon & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15167 (*supra*).

No. 15169.—PROTEST UNSUPPORTED.—Protest 250227 of Marcelino Perez & Co. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15167 (*supra*).

No. 15170.—PROTEST UNSUPPORTED.—Protest 175546 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15167 (*supra*).

No. 15171.—PROTEST UNSUPPORTED.—Protest 240598 of F. E. Ketchum against the assessment of duty by the collector of customs at the port of Marquette. Before Board 2. Opinion by Fischer, G. A.

Same as No. 15167 (*supra*).

No. 15172.—WORSTED TRIMMINGS—SKIRT FACING.—Protest 38710*f* of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 22, 1907. Opinion by Lunt, G. A.

The merchandise, which was invoiced as "the liberty" worsted skirt facing, was found to consist of trimmings composed of a worsted braid with a wool or mohair chenille edge stitched on, put up in lengths of 36 yards. The Board held this material to have been properly classified as wool trimmings under paragraph 371, tariff act of 1897.

No. 15173.—WOOL LININGS—WEIGHT.—Protest 230909 of Max G. Wertheim Company against the assessment of duty by the collector of customs at the port of Cleveland. Before Board 1, April 22, 1907. Opinion by Lunt, G. A.

The question before the Board was whether certain wool linings dutiable under paragraph 368, tariff act of 1897, weighed over 4 ounces per square yard, as classified, or less, as claimed by the importers. Protest sustained.

No. 15174.—FURNITURE COVERED WITH TAPESTRY.—Protest 227601 of Beach Robinson Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1, April 22, 1907. Opinion by Lunt, G. A.

The protest related to an armchair upholstered with tapestry. The Board held it to have been improperly classified as manufactures of wool under paragraph 366, tariff act of 1897, and to be dutiable under paragraph 208 as furniture of wood, as claimed by the importers.

No. 15175.—COAL-TAR COLORS.—Protest 141414 of H. A. Metz & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 22, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 6566 (T. D. 28035), relating to coal-tar co ors.

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No. 15176.—Leaf Tobacco.—Protest 229611 of Calixto Lopez & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 22, 1907. Opinion by Lunt, G. A.

The importers contended that the merchandise had been improperly classified as wrapper tobacco instead of filler. The Board found the bale in question to be all filler, and sustained the protest.

No. 15177.—Mistletoe—Crude Vegetable Substance.—Protest 243972 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, April 22, 1907. Opinion by McClelland, G. A.

Mistletoe stems with the natural berries attached were held free of duty as a crude vegetable substance under paragraph 617, tariff act of 1897.

No. 15178.—Baskets of Shavings and Bamboo.—Protest 240296 of Yokohama Importing Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 22, 1907. Opinion by McClelland, G. A.

The protest related to baskets made of wood shavings and bamboo strips. The Board sustained the importers' contention that they were improperly classified as manufactures of willow, but were dutiable as manufactures of wood under paragraph 208, tariff act of 1897.

No. 15179.—Protests Against Reliquidation.—Protests 172125, etc., of Brown & Roese *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 22, 1907. Opinion by De Vries, G. A.

These protests were filed against reliquidation by the collector under former decisions of the Board. The Board found that the reliquidations had been in strict conformity with such decisions, and that the protests were not filed within the time prescribed by law. Protests overruled.

No. 15180.—Etamines.—Protests 115105, etc., of H. B. Claflin Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 22, 1907. Opinion by De Vries, G. A.

On the authority of G. A. 5790 (T. D. 25580), G. A. 5928 (T. D. 26062), and G. A. 6147 (T. D. 26692), the Board held that the merchandise had been improperly classified as etamines under paragraph 339, tariff act of 1897.

No. 15181.—Dutiable Weight of Tobacco.—Protests 235399, etc., of H. Duys & Co. and protests 220685, etc., of F. Miranda & Co. April 22, 1907.

Same as No. 15123 (*supra*).

No. 15182.—Dutiable Weight of Tobacco.—Protests 244284, etc., of Breslin & Campbell *et al.* against the assessment of duty by the collector of customs at the port of Boston. April 22, 1907.

Same as No. 15123 (*supra*).

No. 15183.—Dutiable Weight of Wool.—Protests 143931, etc., of Carl Grubnau. April 22, 1907.

Same as No. 15125 (*supra*).

No. 15184.—Dutiable Weight of Wool.—Protests 195489, etc., of E. Lissberger *et al.* against the assessment of duty by the collector of customs at the port of New York. April 22, 1907.

Same as No. 15125 (*supra*).

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No. 15185.—FRUITS IN MARASCHINO.—Protest 232071-23792 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, April 23, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 6331 (T. D. 27256) and G. A. 6473 (T. D. 27690), relating to fruits in maraschino.

No. 15186.—DECORATED EARTHENWARE.—Protest 219367 of Cowen, Heineberg & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, April 22, 1907. Opinion by Hay, G. A.

The protest related to porcelain flower pots, which the Board held to have been properly classified as decorated earthenware under paragraph 95, tariff act of 1897.

No. 15187.—CALFSKINS.—Protest 229013 of Abe Stein Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 22, 1907. Opinion by Hay, G. A.

The merchandise, which was classified as hides of cattle, was claimed to be dutiable as skins under paragraph 664, tariff act of 1897. This contention was sustained as to 868 pieces weighing 9,468 pounds. Helmrath *v.* United States (145 Fed. Rep., 36; T. D. 27117) followed.

No. 15188.—PROTESTS ABANDONED.—Protests 233320, etc., of F. W. Woolworth & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 22, 1907.

Protests abandoned; overruled.

No. 15189.—PROTEST UNSUPPORTED.—Protest 224035 of A. L. Tuska against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 22, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 15190.—PROTEST UNSUPPORTED.—Protest 210990 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15189 (*supra*).

No. 15191.—PROTEST UNSUPPORTED.—Protest 243804 of G. W. Sheldon & Co. Before Board 2. Opinion by Fischer, G. A.

Same as No. 15189 (*supra*).

TREASURY DEPARTMENT, *April 24, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 28105.)

Flax-wool fabrics.

UNITED STATES *v.* WILKINSON COMPANY.

U. S. Circuit Court, District of Rhode Island. March 26, 1907. No. 2819 (suit 1862).

FLAX-WOOL FABRICS—MANUFACTURES OF WOOL.

Flax-wool fabrics in which flax is the more valuable element are dutiable under paragraph 346, tariff act of 1897, as fabrics in chief value of flax, rather than under paragraph 366 as manufactures in part of wool, a contrary classification not being required by the proviso in paragraph 391 of the silk schedule that "all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

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For decision below see Abstract 12381 (T. D. 27545), in which the Board sustained the protests of E. DeF. Wilkinson Company against the assessment of duty by the collector of customs at the port of Providence.

Charles A. Wilson, United States attorney, for the United States.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

BROWN, *District Judge:* The United States seeks a reversal of a decision of the Board of General Appraisers to the effect that the merchandise in question—"lappings," so-called, a woven fabric composed of a flax warp and a wool filling—is dutiable under paragraph 346 of the tariff act of 1897 as a woven fabric of which flax is the component material of chief value, and not under paragraph 366 as a manufactured article in part of wool.

I see no reason for disturbing the finding of the Board as to the fact that flax is the component of chief value. The law of the case is considered in the opinion of Judge Lowell in the circuit court for the district of Massachusetts, in United States *v.* Walsh, February 5, 1907 (T. D. 27921), which relates to the same kind of merchandise. This decision holds that the proviso of paragraph 391, "*Provided*, That all manufactures, of which wool is a component material, shall be classified and assessed for duty as manufactures of wool," is limited to fabrics partly of silk and partly of wool. In other words, that the proviso is to be limited to Schedule L—"silks and silk goods"—and is not applicable to other schedules. In United States *v.* Slazenger (113 Fed. Rep., 524), Judge Townsend is also of the opinion that the proviso of paragraph 391 is limited to the silk schedule. I agree with the opinion of these learned judges.

The decision of the Board of General Appraisers is affirmed.

(T. D. 28106.)

Polished steel.

UNITED STATES *v.* CRUCIBLE STEEL COMPANY.

U. S. Circuit Court of Appeals, Second Circuit. April 12, 1907. No. 184 (suit 4150).

POLISHED STEEL—STEEL, COLD ROLLED, SMOOTHED ONLY.

Cold-rolled steel strips, the only polish or brightening on the surface of which is that incidentally acquired in the process of cold rolling, are not subject to the additional duty provided in paragraph 141, tariff act of 1897, on such strips when "cold rolled, * * * brightened, * * * or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only."

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision adverse to the Government.]

For decision below see 147 Federal Reporter, 537 (T. D. 27446), affirming a decision of the Board of United States General Appraisers, G. A. 6213 (T. D. 26870), which had reversed the assessment of duty by the collector of customs at the port of New York.

The material in controversy consisted of cold-rolled steel strips, the only polish or brightening on the surface of which was that incidentally acquired in the process of cold-rolling. The Board and the court below denied the Government's contention that such steel was subject to the additional duty provided in paragraph 141, tariff act of 1897, on—

All strips * * * of iron or steel, * * * which are cold rolled, * * * brightened, * * * or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only.

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These decisions were made on the authority of the ruling of the circuit court of appeals, second circuit, in United States *v.* Crucible Steel Company (137 Fed. Rep., 384; T. D. 26157), and held that the new evidence introduced by the Government failed to differentiate this case from that which was before the circuit court of appeals in said former case.

J. Osgood Nichols, assistant United States attorney, for the United States.

William J. Gibson, for the importers.

Before WALLACE and COXE, Circuit Judges.

PER CURIAM: Judgment affirmed.

(T. D. 28107.)

Action for duties.

UNITED STATES *v.* TIFFANY.

U. S. Circuit Court, Southern District of New York. April 13, 1907.

1. ACTION FOR DUTIES—STAY OF TRIAL PENDING PROCEEDINGS BEFORE GENERAL APPRAISERS.

Where an importer has been sued in the circuit court for unpaid duties, it is proper to stay the trial in order to allow the importer to pay the duties to the collector and have the question of the legality of their assessment tried before the Board of General Appraisers as provided in section 14, customs administrative act of 1890.

2. PROTEST—JURISDICTION OF GENERAL APPRAISERS—CONDITION PRECEDENT—DELAY IN PAYMENT.

Where protest against the assessment of duty has been duly made, mere delay in paying the duties does not deprive the Board of General Appraisers of the power to pass upon the protest.

AT LAW. Action to recover duties.

[Decision adverse to the Government.]

This is an action by the United States to recover duties alleged to be due from Tiffany & Co., by reason of a reliquidation by the collector of customs at the port of New York at an increased rate on an importation by that company. The case involves the construction of section 14, customs administrative act of 1890, the pertinent part of which reads as follows:

SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise * * * shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee or agent of such merchandise, * * * shall within ten days, * * * if dissatisfied with such decision, give notice in writing to the collector, * * * and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of three general appraisers.

Former proceedings in connection with this action are reported in T. D. 26318 (137 Fed. Rep., 971), T. D. 27754, and T. D. 28057, and resulted in the decision by the circuit court of appeals, second circuit, that the importers could not defend the action on the ground, as stated in their answer, that the duties in question were improperly assessed, because, under said section, the decision of the collector is "final and conclusive," unless attacked by the method prescribed in said section—that is, by paying the duties under protest and thus bringing the matter before the Board of General Appraisers.

The importers have now moved to amend their answer, alleging that, under the decision of the circuit court of appeals in the case, they became entitled as a matter of law to pay the collector the amount demanded in the complaint; that, having duly

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protested and filed notice of dissatisfaction, they were entitled to go to the Board of General Appraisers for proper action as to the classification; that they have tendered said amount to the collector; that he refuses to accept it, and that they are ready and willing to pay the sum so refused.

The importers have also moved for an order perpetually staying the trial of the action until the collector shall receive the duties and put the importers in position to try the question of classification of the merchandise before the Board, and for such other and further relief as the court shall deem just and proper in the premises.

J. Osgood Nichols, assistant United States attorney, for the United States.

D. Macon Webster (*Arthur M. King* of counsel), for the importers.

LACOMBE, *Circuit Judge:* It seems unnecessary to pass upon the question whether defendant shall he allowed to plead the tender as a defense. Presumably the money offered was not accepted because of some misapprehension as to the decision of the circuit court of appeals. That tribunal held that the merits of the controversy should be passed upon by the Board of General Appraisers, to whom, upon payment of the duty assessed, the collector would transmit the invoice and other documents, as the customs administrative law provides. Under the authorities, protest being filed within the ten days, mere delay in payment does not deprive the Board of the power to pass upon the question of proper classification. The defendant, therefore, may take an order staying the trial of this action until after the Board of General Appraisers shall have passed upon the question as to classification for duty. The order may contain a proviso to the effect that if defendant shall fail to tender the amount liquidated, with interest, and a request that the papers be transmitted under section 14, within ten days from entry of the order, plaintiff may move to vacate the stay.

(T. D. 28108.)

Isle of Pines.

PEARCY *v.* STRANAHAN.

United States Supreme Court. April 8, 1907. No. 1.

ISLE OF PINES—FOREIGN COUNTRY.

The Isle of Pines is a part of Cuba, and therefore a foreign country within the meaning of the enacting clause of the tariff act of 1897, and importations therefrom are subject to the tariff laws of the United States.

IN ERROR to the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

These proceedings were in the name of Edward J. Pearcy, importer and plaintiff in error, against Nevada N. Stranahan, collector of customs at the port of New York. There was no opinion below.

James C. Lenney, for the importer.

Charles J. Bonaparte, Attorney-General, *Henry M. Hoyt*, Solicitor-General, and *Otis J. Carlton*, special assistant to the Attorney-General, for the United States.

Mr. Chief Justice FULLER delivered the opinion of the Court:

Plaintiff brought his action in the circuit court of the United States for the southern district of New York against the then collector of the port of New York to recover the value of certain cigars seized by him, which had been brought to that port from the Isle of Pines, where they had been produced and manufactured. This seizure was made under the Dingley act, so-called (act July 24, 1897; 30 Stat., 151; ch. 11), and the regulations of the Secretary of the Treasury thereunder. The Dingley act provided for the imposition of duties "on articles imported from foreign countries," and

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in plaintiff's complaint it was asserted that the Isle of Pines was "in possession of and part of the United States," and hence domestic territory. The Government demurred, the demurrer was sustained, the complaint dismissed, and the case brought here on a writ of error.

Whether the Isle of Pines was a part of the United States is a conclusion of law not admitted by the demurrer. It was certainly not such before the treaty of peace with Spain, and if it became so it was by virtue of that treaty. The court takes judicial cognizance whether or not a given territory is within the boundaries of the United States, and is bound to take the fact as it really exists, however it may be averred to be. Jones *v.* United States (137 U. S., 202); Lincoln *v.* United States (197 U. S., 419; T. D. 26393); Taylor *v.* Barclay (2 Sim., 213).

August 12, 1898, a protocol of agreement for a basis for the establishment of peace was entered into between the United States and Spain, which provided:

ART. I. Spain will relinquish all claim of sovereignty over and title to Cuba.

ART. II. Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones to be selected by the United States. (30 Stat., 1742.)

This was followed by the treaty of peace, ratified April 11, 1899, containing the following articles:

ART. I. Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ART. II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones. (30 Stat., 1754–1755.)

In Neely *v.* Henkel (180 U. S., 109; January 14, 1901) the question was whether Cuba was a foreign country or foreign territory within the act of Congress of June 6, 1900 (31 Stat., 656, ch. 793), providing for the extradition from the United States of persons committing crimes within any foreign country or foreign territory or any part thereof, occupied or under the control of the United States. And it was held that Cuba was within this description. Mr. Justice Harlan, delivering the opinion of the court, said:

The facts above detailed make it clear that within the meaning of the act of June 6, 1900, Cuba is foreign territory. It can not be regarded, in any constitutional, legal, or international sense a part of the territory of the United States.

While by the act of April 25, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several States to such extent as was necessary, to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States, but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the Government, by the joint resolution of April 20, 1898, expressly disclaimed any purpose to exercise sovereignty, jurisdiction, or control over Cuba "except for the pacification thereof," and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain.

Cuba is none the less foreign territory, within the meaning of the act of Congress because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own affairs without interference by other nations. The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba.

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It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the treaty of Paris, was to be treated as if it were conquered territory. But as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba, to whom it rightfully belongs, and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action.

If, then, the Isle of Pines was not embraced in Article II of the treaty, but was included within the term "Cuba" in Article I, and therefore sovereignty and title were merely relinquished, it was "foreign country" within the Dingley act.

This inquiry involves the interpretation which the political departments have put upon the treaty. For, in the language of Mr. Justice Gray, in Jones *v.* United States, "who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges as well as all other officers, citizens, and subjects of that government."

By the joint resolution of April 20, 1898 (30 Stat., 738), entitled "Joint resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the United States disclaimed any disposition or intention to exercise sovereignty or control over Cuba, except in the pacification thereof, and asserted its determination, when that was accomplished, to leave the control of the island to its people. What was the signification of the word "Cuba" at that time?

The record of the official acts of the Spanish Government from 1774 to 1898 demonstrates that the Isle of Pines was included in the political division known as "Cuba." The first official census of Cuba, in 1774; the "Statistical plan of the ever faithful isle of Cuba for the year 1827;" the establishment by the governor-general, in 1828, of a colony on the island; the census of 1841; the budgets of receipts and expenses; the census for 1861, 1877, 1887, and so on, all show that the Isle of Pines was, governmentally speaking, included in the specific designation "Cuba" at the time the treaty was made and ratified, and the documents establish that it formed a municipal district of the province of Havana.

In short, all the world knew that it was an integral part of Cuba, and in view of the language of the joint resolution of April 20, 1898, it seems clear that the Isle of Pines was not supposed to be one of the "other islands," ceded by Article II. Those were islands not constituting an integral part of Cuba, such as Vieques, Culebra, and Mona Islands adjacent to Porto Rico.

Has the treaty been otherwise interpreted by the political departments of this Government? The documents to which we have had access, with the assistance of the presentation of the facts condensed therefrom in the brief for the United States, enable us to sufficiently indicate the situation in that regard, and we think it proper to do this, notwithstanding the determination of the case turns at last on a short point requiring no elaboration.

The Spanish evacuated Havana January 1, 1899, and the government of Cuba was transferred to a military governor as the representative of the President of the United States. The President ordered, August 17, 1899, a census to be taken as a first step toward assisting "the people of Cuba" to establish "an effective system of self-government." In accomplishing this the island was divided into 1,607 enumeration districts. Three enumerators took the census of the Isle of Pines, which was described as a municipal district of the judicial district of Bejucal, in the province of Havana. The report on the census, as published by the War Department in 1900, stated:

The Government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines, lying directly to the south of it, and more than a

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thousand islets and reefs scattered along its northern and southern coasts. * * * The Isle of Pines, with an area of 840 square miles, is a municipal district of the province of Havana. * * * The total population of Cuba, including the Isle of Pines and the neighboring keys, was, on October 16, 1899, 1,572,797.

The population tables give the population of the Isle of Pines as a municipal district of Havana province, and so of the statistics as to rural population; sex, nativity and color; age and sex; birthplace; conjugal condition; school attendance; foreign whites; number and size of families; dwellings of families—these and like items are given as to the Isle of Pines as under the province of Havana.

In August, 1899, the military governor of Cuba appointed a mayor and first assistant mayor of the Isle of Pines. On June 16, 1900, an election was held throughout the island, at which the people of Cuba in all their municipalities elected their municipal officers, participated in by the inhabitants of the Isle of Pines, as is stated in the report of the Committee on Foreign Relations, Senate Document No. 205, Fifty-ninth Congress, though this was denied in a minority report. A constitutional convention was called and the inhabitants of the Isle of Pines participated in the election of delegates thereto, September 15, 1900. The convention concluded its work by October 1, 1901, and December 31, 1901, an election was held to choose governors of provinces, provincial councilors, members of the house of representatives, and presidential and senatorial electors, under an order of General Wood of October 14, 1901, No. 218, approved by the War Department, which divided the province of Havana into four circuits, the third being composed of several ayuntamientos, of which the Isle of Pines was one. February 24, 1902, the electors met, chose senators, and elected Senor Palma President, and Senor Romero Vice-President.

The government was transferred to Cuba May 20, 1902, and in making the transfer, and declaring the occupation of Cuba by the United States and the military government of the island to be ended, the military governor wrote to "the President and Congress of Cuba," among other things:

It is understood by the United States that the present government of the Isle of Pines will continue as a *de facto* government, pending the settlement of the title to said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1902[1].

On the same day President Palma replied:

It is understood that the Isle of Pines is to continue *de facto* under the jurisdiction of the Government of the Republic of Cuba, subject to such treaty as may be entered into between the Government of the United States and that of the Cuban Republic, as provided for in the Cuban constitution and in the act passed by the Congress of the United States, and approved on the 2d of March, 1901. (31 Stat., 897.)

At that date the Isle of Pines was actually being governed by the Cubans through municipal officers elected by its inhabitants, and a governor of the province of Havana, councilors, etc., in whose choice they had participated. And see Neely *v.* Henkel (180 U. S., 109, 117, 118).

February 16, 1903, the Senate of the United States, by resolution, requested the President "to inform the Senate as to the present status of the Isle of Pines, and what government is exercising authority and control in said island."

In reply, the President submitted a report from the Secretary of War, which stated:

The nature of the *de facto* government under which the Isle of Pines was thus left pending the determination of the title thereof by treaty is shown in the following indorsement upon a copy of the said resolution by the late military governor of Cuba:

[Here follows the indorsement, dated February 20, 1903, of which the following is a part:]

"At the date of transfer of the Island of Cuba to its duly elected officials the Isle of Pines constituted a municipality included within the municipalities of the province of Havana and located in the judicial district of Bejucal. The government of the island is vested in its municipal officers, subject to the general control of the civil

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governor of the province of Havana, who is vested under the constitution of Cuba with certain authority in the control of municipal affairs. Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the governor-general. The Isle of Pines, as it had existed under the military government, was transferred as a *de facto* government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War. The government of the island to day is in the hands of its municipal officers, duly elected by the people under the general control of the civil governor of the province of Havana and the Republic of Cuba. As I understand it, the government of the Isle of Pines is vested in the Republic of Cuba, pending such final action as may be taken by the United States and Cuba looking to the ultimate disposition of the island. No special action was taken to protect the interests of the citizens of the United States who have purchased property and have settled in the Isle of Pines, for the reason that no such action was necessary. All Americans in the island are living under exactly the same conditions as other foreigners, and if they comply with the laws in force it is safe to say that they will not have any difficulty or need special protection. At the time these people purchased property they understood distinctly that the question of ownership of the Isle of Pines was one pending settlement, and in locating there they took the risks incident to the situation."

We are justified in assuming that the Isle of Pines was always treated by the President's representatives in Cuba as an integral part of Cuba. This was indeed to be expected, in view of the fact that it was such at the time of the execution of the treaty and its ratification, and that the treaty did not provide otherwise in terms, to say nothing of general principles of international law applicable to such coasts and shores as those of Florida, the Bahamas, and Cuba. Hall (4th ed.), 129, 130; Louisiana *v.* Mississippi (202 U. S., 1, 53); *The Anna* (5 C. Rob., 273).

In August, 1902, the Treasury Department decided (T. D. 23922) that duties should be assessed on goods coming from the Isle of Pines at the same rates as on similar merchandise imported from other places. On July 2, 1903, a treaty with Cuba was signed, relinquishing any claim by the United States to the Isle of Pines under the treaty of peace; but this failed of ratification, and on March 2, 1904, another treaty was signed, which relinquished all claim of title under that treaty.

November 27, 1905, the Secretary of State wrote an American resident of the Isle of Pines:

The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. In my judgment the United States has no substantial claim to the Isle of Pines. The treaty merely accords to Cuba what is hers in accordance with international law and justice.

At the time of the treaty of peace, which ended the war between the United States and Spain, the Isle of Pines was and had been for several centuries a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba, and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation.

There are some letters of an Assistant Secretary of War or written by his direction, and other matters, referred to, which we do not regard as seriously affecting the conclusion that the Executive has consistently acted on the determination that the United States had no substantial claim to the Isle of Pines under the treaty.

The only significant legislative action is found in the proviso of the act of March 2, 1901, the army appropriation act (31 Stat., 895, ch. 803), commonly called the Platt amendment (897), which reads:

Provided further, That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled "For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to

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carry these resolutions into effect," the President is hereby authorized to "leave the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

Then follow eight clauses, of which the sixth is—

VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

It appears that certain American citizens, asserting interests in the Isle of Pines, had contended that it belonged to the United States under the treaty; and the sixth clause of the Platt amendment, while not asserting an absolute claim of title on our part, gave opportunity for an examination of the question of ownership and its settlement through a treaty with Cuba. The Republic of Cuba has been governing the isle since May 20, 1902—the present situation need not be discussed—and has made various improvements in administration at the suggestion of our Government; but Congress has taken no action to the contrary of Cuba's title as superior to ours.

It may be conceded that the action of both the political departments has not been sufficiently definite to furnish a conclusive interpretation of the treaty of peace as an original question, and as yet no agreement has been reached under the Platt amendment. The Isle of Pines continues at least *de facto* under the jurisdiction of the Government of the Republic of Cuba, and that settles the question before us, because, as the United States have never taken possession of the Isle of Pines as having been ceded by the treaty of peace, and as it has been and is being governed by the Republic of Cuba, it has remained "foreign country" within the meaning of the Dingley act, according to the ruling in De Lima *v.* Bidwell (182 U. S., 1) and cases cited; United States *v.* Rice (4 Wheat., 246). There has been no change of nationality for revenue purposes, but, on the contrary, the Cuban Government has been recognized as rightfully exercising sovereignty over the Isle of Pines as a *de facto* government until otherwise provided. It must be treated as foreign, for this Government has never taken, nor aimed to take, that possession in fact and in law which is essential to render it domestic.

Judgment affirmed.

Mr. Justice McKenna concurred in the judgment; Mr. Justice White and Mr. Justice Holmes concurred specially; Mr. Justice Moody took no part.

Mr. Justice White, concurring:

My reasons for agreeing to the conclusion announced by the court are separately stated to prevent all implication of an expression of opinion on my part as to a subject which in my judgment the case does not require and which, as it is given me to see it, may not be made without a plain violation of my duty.

The question which the case raises, by way of a suit to recover duties paid on goods brought from the Isle of Pines, is whether that island, by the treaty with Spain, became a part of the United States, or was simply left or made a part of the Island of Cuba, over which the sovereignty of Spain was relinquished.

I accept the doctrine which the opinion of the court announces, following Jones *v.* United States (137 U. S., 202), that "who is the sovereign *de jure* or *de facto* of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges as well as other officers, citizens, and subjects of that government." That the legislative and executive departments have conclusively settled the present status of the Isle of Pines as *de facto* a part of Cuba and have left open for future determination the *de jure* claim, if any, of the United States to the island, as the court now declares, is to me beyond possible contention. Thus, by the amendment to the act of 1891, which was enacted to determine the *de facto* position of the island and to furnish a rule for the

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guidance of the executive authority in dealing in the future with the island, it was expressly provided "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." So, also, when the Island of Cuba was turned over to the Cuban Government by the military authority of the United States, that Government was expressly notified by such authority, under the direction of the President, that, whilst the *de facto* position of the Isle of Pines as a part of Cuba was not disturbed, it must be understood that its *de jure* relation was reserved for future determination by treaty between Cuba and the United States. And this notification and relation was in terms accepted by the President of the Republic of Cuba. If the opinion now announced stopped with these conclusive expressions, I should of course have nothing to say. But it does not do so. Although declaring that the *de facto* position of the Isle of Pines as resulting from legislative and executive action is binding upon the courts, and although referring to the conclusive settlement of that *de facto* status and the reservation by the legislative and executive departments of the determination of the *de jure* status for future action, the opinion asserts that it is open and proper for the court to express an opinion upon the *de jure* status—that is, to decide upon the effect of the treaty. In doing so, it is declared that all the world knew that the Isle of Pines was an integral part of Cuba, this being but a prelude to an expression of opinion as to the rightful construction of the treaty. To my mind any and all expression of opinion concerning the effect of the treaty and the *de jure* relation of the Isle of Pines is wholly unnecessary and can not be indulged in without disregarding the very principle upon which the decision is placed—that is, the conclusive effect of executive and legislative action. In other words, to me it seems that the opinion, whilst recognizing the force of executive and legislative action, necessarily disregards it. This follows, because the views which are expressed on the subject of the meaning of the treaty amount substantially to declaring that the past action of the executive and legislative departments of the government on the subject have been wrong, and that any future attempt by those departments to proceed upon the hypothesis that the *de jure* status of the island is unsettled will be a violation of the treaty as now unnecessarily interpreted.

Mr. Justice HOLMES concurs.

(T. D. 28109.)

Wire rat traps.

BURDITT & WILLIAMS COMPANY *v.* UNITED STATES.

U. S. Circuit Court of Appeals, First Circuit. April 9, 1907. No. 678 (suit 1828).

1. ARTICLES MADE FROM COATED WIRE.

Paragraph 137, tariff act of 1897, prescribes a duty on wire, varying according to gauge, and in a proviso prescribes that articles made from wire shall pay the "duty imposed upon the wire used in the manufacture of such articles, and in addition thereto one and one-fourth cents per pound." The proviso contains an exception as to wire rope and strand followed by this provision, "and on iron or steel wire coated, * * * two-tenths of one cent per pound in addition to the rate imposed on the wire from which it is made." *Held* (1) that the exception does not apply to this last provision so as to exclude coated wire from the operation of the proviso; (2) that this provision was not intended as a substitute for the proviso, with regard to coated wire, and (3) that articles manufactured from coated wire were intended to be subjected to the additional duty provided for such manufactures, as well as to that provided for the coating.

2. WIRE RAT TRAPS—CUSTOMS PRACTICE—DOUBTFUL STATUTE.

In construing paragraph 137, tariff act of 1897, providing that articles manufactured from wire shall pay a duty of 1¼ cents per pound "in addition to the rate imposed on the wire from which it is made," and that coated wire shall pay a duty of .2 cent in addition to that imposed on the wire from which it is made, *Held* that, it being doubtful whether the additional duty for coated wire applied to such wire when made into articles, and the customs practice having been not to apply it, wire rat traps made from coated wire are liable only to the duty of 1¼ cents per pound in addition to that imposed on the wire from which it was made.

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3. WIRE ARTICLES—"MANUFACTURED"—WIRE COATING.

Wire when coated with metal is not "manufactured" within the meaning of paragraph 137, tariff act of 1897, relating to "articles manufactured from * * * wire."

4. CUMULATIVE DUTIES—TREBLE DUTIES.

Under the protective system involved in the tariff act of 1897, containing many instances of cumulative duties, no particular inference can be drawn in support of an objection to the imposition of double or treble duties.

5. STATUTORY CONSTRUCTION—CUSTOMS PRACTICE—DURATION.

A formal ruling of the Treasury Department, supported by five years' continuous, uniform, and universal practice, with reference to the construction and practical operation of a doubtful statute, is, as against the Government, controlling as to the effect of such statute.

6. SAME—PROTECTIVE FEATURE OF TARIFF LAWS.

In construing the tariff act of 1897 it is proper to apply an exception to the ordinary rules, in that the policy of the act as one of protection to American manufactures may be regarded.

APPEAL from the circuit court of the United States for the district of Massachusetts.

[Decision adverse to the Government.]

For decision below see 147 Federal Reporter, 892 (T. D. 27639), affirming a decision of the Board of United States General Appraisers, G. A. 6357 (T. D. 27325), which had modified the assessment of duty by the collector of customs at the port of Boston.

Charles S. Hamlin, for the importers.

William H. Garland, assistant United States attorney, for the United States.

Before COLT and PUTNAM, Circuit Judges, and ALDRICH, District Judge.

PUTNAM, *Circuit Judge:* This case arises on the construction of paragraph 137 of the customs act of 1897, as follows:

137. Round iron or steel wire, not smaller than number thirteen wire gauge, one and one-fourth cents per pound; smaller than number thirteen and not smaller than number sixteen wire gauge, one and one-half cents per pound; smaller than number sixteen wire gauge, two cents per pound: *Provided*, That all the foregoing valued at more than four cents per pound shall pay forty per centum ad valorem. Iron or steel or other wire not specially provided for in this Act, including such as is commonly known as hat wire, or bonnet wire, crinoline wire, corset wire, needle wire, piano wire, clock wire, and watch wire, whether flat or otherwise, and corset clasps, corset steels, and dress steels, and sheet steel in strips, twenty-five one-thousandths of an inch thick or thinner, any of the foregoing, whether uncovered or covered with cotton, silk, metal, or other material, valued at more than four cents per pound, forty-five per centum ad valorem: *Provided*, That articles manufactured from iron, steel, brass, or copper wire, shall pay the rate of duty imposed upon the wire used in the manufacture of such articles, and in addition thereto one and one-fourth cents per pound, except that wire rope and wire strand shall pay the maximum rate of duty which would be imposed upon any wire used in the manufacture thereof, and in addition thereto one cent per pound, and on iron or steel wire coated with zinc, tin, or any other metal, two-tenths of one cent per pound in addition to the rate imposed on the wire from which it is made.

The importations consisted of rat traps, made of steel wire coated with copper. Some question arose at our bar whether the traps were made of coated wire or whether the coating was done after the traps were put in shape, but the record shows that the former was the case. As said by the importer, practically the only question in the case is whether, on account of the wire being coated, the traps are subject to the additional duty of two-tenths of 1 cent per pound, stated in the concluding words of the paragraph in question. The ruling was against the importer, and thereupon it appealed to us.

In developing its position here, the importer says that the words "except that," in the proviso to which the imposition of two-tenths of 1 cent per pound is attached, govern everything which follows them, leading to the result that "wire coated" is

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itself a manufacture of wire, so that the rat traps in question and coated wire are each of them manufactures especially and alternately provided for. The importer also claims that, on the ruling of the circuit court, a double duty is imposed, which, of course, is the fact. On the other hand, the United States make no definite proposition beyond maintaining in general terms the result reached by the circuit court, except only that they rely upon Salt *v.* United States (127 Fed. Rep., 890; T. D. 25044), affirmed by the circuit court of appeals in 134 Federal Reporter, 1021 (T. D. 25901); and except, also, that they make some reference to "component material of chief value," which is inapplicable under the act of 1897. Salt *v.* United States is also to some extent relied on by the importer; but it affords no assistance to us, because it arose from importations of manufactures of copper wire. Although copper wire and iron and steel wire are all covered by paragraph 137, yet the methods by which each is treated are so essentially different that we need make no further observation in reference to the decision thus cited pro and con.

The reliance which the importer places on the words "except that," to which we have referred, is not supported by any plausible reason therefor drawn from the context. It would have support if coated wire could be regarded a manufacture of wire, so as to be, as further suggested by the importer, an alternative for other manufactures of wire; but we will see that that proposition can not be sustained. In no other aspect could these words relieve the particular portion of paragraph 137 in issue from the difficulties which present themselves. The words "and on" would still remain undisposed of, indicating that that portion is dislocated.

Although the objection by the importer on the point of double duty was given some weight by the Treasury in T. D. 22474, hereafter cited, it is clearly of no assistance. There is a double duty on any construction of the statute, and the question is not one of double but of treble duty. However this may be, under the protective systems involved in the statutes of 1890 and 1897, duties specific and ad valorem were piled on each other so often that no particular inference can be drawn from any suggestion as to double duties or treble duties as applied to the case at bar. So, also, the claim by the importer that iron and steel wire coated is a manufacture of wire, and therefore is to be classed with other manufactures of wire, it is plain can not be maintained. In support of this position the importer cites several decisions of the Treasury, all of which were prior to the statutes of 1890 and 1897, and were either so remote or coupled with such special circumstances that they are of no assistance whatever. Under the practical rules of construction of customs statutes, to which commercial designations have so much relation, the mind which is fairly experienced perceives at once that giving an ordinary coating to wire does not constitute a new manufacture within the ordinary commercial sense of the expression or within the meaning of such statutes. This topic was extensively developed by us in United States *v.* Proctor (145 Fed. Rep., 126, 131; T. D. 27115), where we pointed out that the extract of nutgalls, although in such advanced state that it contained all the elements of tannin or tannic acid, had not changed its nomenclature so as to be said to be advanced into a distinctly new thing, as water is advanced into steam or clay into alumina and its metal aluminum. Hartranft *v.* Wiegmann (121 U. S., 609, 615, 616), Tidewater Oil Company *v.* United States (171 U. S., 210, 216), Allen *v.* Smith (173 U. S., 389, 399), and United States *v.* Dudley (174 U. S., 670, 678). There remains, nevertheless, to be considered the proposition made by the importer that, on a fair, natural reading of the proviso applicable here, the specific duty of two-tenths of 1 per cent is not to be levied except on wire which has been coated and which is imported as such. We will return to this later.

The Board of General Appraisers did not discuss the particular topic before us, and the reason therefor is apparent. The appraiser at the port of Boston, where the merhandise was entered, assessed a duty of 40 per cent ad valorom, plus 1¼ cents per pound. Nothing was said by him about the two-tenths of 1 cent. The protests of

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the importer were against the 40 per cent, and those parts of the protests which name the proper duty to be assessed contained several possible lawful rates; among the rest, that of 2 cents, plus 1¼ cents, plus two-tenths of 1 cent, the very duty which was held by the circuit court to be lawful. This latter suggested rate is what is spoken of by the Board of Appraisers as "(c)."

The Board rejected the 40 per cent ad valorem duty, and, without discussion as to it, it accepted "(c)" exactly as it stood in the protests; so that the importer is now protesting a rate of duty suggested by itself. This is, nevertheless, without objection on the part of the United States; so that it remains for us to determine what assessment is in fact in accordance with the statute. By a decision of the Treasury of April 20, 1900 (T. D. 22168), it was held that heddles, tinned, carried the specific duties now under discussion of 1¼ cents per pound and two-tenths of 1 cent for the tinning. Subsequently, by its decision of September 7, 1900 (T. D. 22474), the Treasury formally reversed its decision of April 20, and held that the additional duty of two-tenths of 1 cent per pound was not to be imposed upon heddles manufactured of wire, tinned. The heddles stand exactly for the rat traps here under consideration; and the decision of the Treasury of September 7, 1900, is directly in point. We are informed that, until the protests in this case, which bear date respectively on September 20, 1905, and October 13, 1905, the importations of this importer were constantly assessed without the addition of the two-tenths of 1 cent per pound, and duties were paid accordingly. The record shows no trace of any assessment of this additional duty anywhere, or any claim by the Treasury for any such assessment, during the five years which thus intervened. So absolutely uniform was the practice that, in the case before us, the appraiser, as a matter of course, added only 1¼ cents to the 40 per cent ad valorem, although, clearly, the additional duty of two-tenths of 1 cent must be added to the ad valorem duty on iron or steel wire if added to the specific duty. Therefore, we have here a formal ruling of the Treasury, supported by five years' continuous, uniform, and universal practice; and this with reference to the construction and practical operation of a statute which certainly must be held in doubt, in view at least of the fact that the experts of the Treasury gave it two absolutely opposite constructions within a period of less than six months.

Aside from this decision of the Treasury of September 7, 1900, and the practice following it, the paragraph in question has no satisfactory history and no prototype, except as we may hereafter explain. It shows a dislocated form of expression, in that it uses the words "and on," which have no proper relation to any phraseology which precedes them. This suggests that it came in by an amendment, the circumstances touching which have in no manner been explained to us. Therefore, it is practically impossible to apply the more ordinary rule of construction, except, on the one hand, that, where a question of interpretation of a customs statute is doubtful, the doubt will be resolved in favor of the importer, a general rule constantly repeated, and, on the other hand, that, applying a particular exceptional rule as to the statutes of 1890 and 1897, we must regard the policy running through them to be one of protection to our manufactures. Arnold *v.* United States (147 U. S., 494, 497). The most which can be said as to general rules of construction is that the phraseology here interposed by Congress can not be rejected and must be interpreted in some way.

The importer finds support for his view of this paragraph in that the words on which the United States rely close the paragraph, and by their mechanical arrangement come in after the entire question as to duty on these importations has apparently been disposed of. Therefore, the importer's general position which we have stated, that the closing words have nothing to do with these importations, is not without some plausibility. On the other hand, the peculiar words "and on" show that they were accidentally located. This leaves a plain right to test the intention of Congress by experimentally locating them elsewhere. Relocating them, therefore, in some

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part of the paragraph before the proviso assessing the duty of 1¼ cents per pound on manufactures from wire, the whole has an orderly reading, and it would then naturally be conceded that the position of the United States at bar was correct.

The particular expression in question was undoubtedly brought from paragraph 148 of the customs act of 1890. This paragraph commences with imposing a duty upon wire made of iron or steel, thus generally like the opening portion of paragraph 127 in issue here. Then later, in paragraph 148, come these words: "There shall be paid on iron or steel wire coated with zinc or tin, or any other metal," "one-half of one cent per pound in addition to the rate imposed on the wire of which it is made." This is exactly the phraseology, *mutatis mutandis*, found in issue here, the words "there shall be paid" being omitted. This mutilation, and the consequent dislocation to which we have referred, establishing our proposition of coming in by an amendment, justify the experimental relocation which we have suggested. The act of 1890 contains no specific duty on articles manufactured from wire in the form found in paragraph 137 of the present statute; but it guards against the manufactured article paying less than the duty imposed upon the wire from which it is manufactured, or which forms a component part of chief value. Under that act the duty on traps like those imported in this case was assessed under the more general provisions of the law; and we are told that it was assessed accordingly at 45 per cent ad valorem, which was probably sufficient to promote the purpose of Congress, which had in view in this legislation the protection of our industries.

However, we have the rule for the interpretation of these statutes of 1890 and 1897, already stated, that they are to be regarded as intended for the protection of domestic industries, and in that light and in accordance with the customary methods, we should expect an additional duty for each marked stage in advance which involves any considerable amount of labor. One of these stages would be the making of the plain wire, the second the coating, the third the manufacture of the specific article from the coated wire; and we would be entitled to assume that the phraseology should be relocated so as to carry out the general purpose of this class of legislation. After all, the natural interpretation of the statute is that wire is wire whether coated or not, and that, when Congress declares that articles manufactured from iron or steel wire shall pay the rate of duty "imposed upon the wire used in the manufacture of such articles," besides some special additional duty, it intends to take wire in the form in which it is manufactured, whether coated or uncoated, so that the basis is what wire uncoated pays if wire not coated is used, or what wire coated pays if wire coated is used. Independently of the considerations which we will now state, this is the interpretation which, we think, belongs to this paragraph; but we can not overlook the ruling of the Treasury of September 7, 1900, to which we have already referred, and the unbroken, continuous practice from that time until the present importations were made in the autumn of 1905, which practice was in accordance with the present contention of the importer.

We gave attention to the rule of construction growing out of settled practices of Executive Departments, a class which seems to have peculiarly just application to customs statutes, in United States *v.* Proctor (145 Fed. Rep., 126, 132; T. D. 27115), by an opinion passed down on January 25, 1906. There the circumstances were such that there was no question about its application; and we referred to it in that case only in a general way, and only to some leading authorities. The case at bar, however, is closer, so that we need give the law in this particular a somewhat fuller exposition. By its decision of April 20, 1900, which was within three years from the time the act of 1897 went into effect, the Treasury ruled, as we have shown, in accordance with the present position of the United States. On further consideration, however, in September, 1900, the Department positively ruled in favor of the position taken before us by the importer; and the practice ever since has been in accordance with that revised ruling. Notwithstanding the Department first ruled as it did in April, it can not be fairly said that the departmental practice has not been uniform, because the prompt revision of the

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ruling which the Department speedily found to be erroneous can hardly be regarded as creating the lack of such uniformity as the Supreme Court said in United States *v.* Healey (160 U. S., 136, 145), is necessary in order to justify the application of the particular rule we are considering. It can hardly be said that, because at an early day the Treasury made a ruling which it immediately after corrected as erroneous, following ever since a practice in accordance with the correction, this amounts to a lack of uniformity in the proper sense of the expression.

Of course, the length of time over which the practice of the Department extended in this case is shorter than that which has usually accompanied the application of this special rule in the various cases reported; yet, in United States *v.* Alabama Railroad Company (142 U. S., 615, 621), the continuance of the practice was only a short time longer than in the case at bar. Nevertheless, it was regarded as sufficient to justify the adoption by the court of the practical construction given there by the Postmaster-General. The rule seems to be always applied where the statute is really doubtful, and where, also, the departmental construction was practically contemporaneous with its enactment and continued a considerable length of time, with uniformity. The various elements named in this statement give way, more or less, according to all the circumstances of the case, so that, on the whole, the court may derive assistance from the construction given by the executive officers, though all these elements are not present to their full extent. It is often said on general terms as follows:

> The construction given to the statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons. United States *v.* Moore (95 U. S., 760, 763).

Such expressions as this show that the rule is not a stiff one, and that, as we have said, it has regard to all the circumstances. As to what is a sufficient doubt, Mr. Justice Miller, speaking in behalf of the court, in Peabody *v.* Stark (16 Wall., 240, 248), says:

> In the absence of a clear conviction on the part of the members of the court on either side of the proposition in which all can freely unite, we incline to adopt the uniform ruling of the office of the Internal Revenue Commissioner.

Returning again to United States *v.* Alabama Railroad Company (*supra*, at page 621), the opinion observes that the court will "look with disfavor upon any sudden change, whereby parties who have contracted with the Government upon the faith of such construction may be prejudiced."

This has peculiar application to importers who purchase goods abroad, expecting to market them at home, on the faith of a continuous practice of the Treasury in administering the statutes. This was peculiarly illustrated in United States *v.* Proctor (*supra*), where it was shown that the contemplated change on the part of the United States relative to the rate of duty there involved would have resulted in a practical confiscation of importations, which the importer was justified by the preceding practice in assuming would yield a reasonable business profit. In the same direction the opinion passed down in behalf of the court in United States *v.* Finnell (185 U. S., 236, 244), said that, if a construction acted upon by accounting officers for many years should be overthrown, "we apprehend that much confusion might arise." This was followed by a repetition of what we have already cited from United States *v.* Alabama Railroad Company, that "the action during many years of the Department charged with the execution of the statute should be respected and not overruled except for cogent reasons."

Of course, we can not hold that the United States is estopped by the conduct of its executive officers in the technical sense of that expression; but we are reminded in United States *v.* Finnell, just cited, at page 144, that Congress can enact legislation to change any existing practice, if it deems that course conducive to public interests. We are also reminded by what we have quoted from United States *v.* Alabama Railroad

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Company, at page 621, that the equities are such that, under all the circumstances, we should apply the particular rule of construction which we are discussing. Therefore, we hold that the duty to be imposed is as now maintained by the importer—that is, the duty as assessed less two-tenths of 1 cent per pound, leaving a duty of 2 cents per pound, plus 1¼ cents per pound, in accordance with paragraph 137 of the customs act of 1897.

The judgment of the circuit court is reversed, and the case is remanded to that court, with directions for further proceedings in accordance with our opinion passed down this day.

(T. D. 28110.)

Apricot kernels.

Decision of the United States circuit court of appeals, second circuit, United States *v.* Spencer (T. D. 27893), acquiesced in.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, in which he states that the case of United States *v.* Spencer & Co., suit 3973 (T. D. 27893), was recently decided in the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in suit consisted of apricot kernels which were assessed with duty at the rate of 6 cents per pound under paragraph 269 of the act of July 24, 1897, as shelled almonds by similitude. The importers protested, claiming the same to be dutiable as nuts not specially provided for at the rate of 1 cent per pound under paragraph 272, which claim was sustained by the United States circuit court of appeals without opinion.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward the usual certified statement for the refund of the duties collected in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(35207.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28111.)

Singapore buffalo hides.

Decision of the United States circuit court for the southern district of New York, Baeder, Adamson & Co. *v.* United States (T. D. 28008), acquiesced in.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, dated the 5th ultimo, in which he states that suit 4208 (T. D. 28008), Baeder, Adamson & Co. *v.* United States, was recently decided in the United States circuit court for the southern district of New York adversely to the Government.

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The merchandise in suit consisted of buffalo hides which were assessed with duty as cattle hides at the rate of 15 per cent ad valorem under paragraph 437 of the tariff act of July 24, 1897, and the importers claimed that they were entitled to free entry under paragraph 664 of the said act as hides not specially provided for, which claim was sustained by the court.

The Attorney-General advises the Department that no further proceedings will be directed in this case, and you are therefore hereby authorized to forward a certified statement for the refund of the duties in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(11489.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28112.)

Drawback on linen fire hose.

Drawback on additional sizes and styles of linen fire hose manufactured by Charles Niedner, of Malden, Mass., from imported linen yarns.—T. D. 25029 of February 20, 1904, extended.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department's regulations of February 20, 1904 (T. D. 25029), establishing a rate for the allowance of drawback on the exportation of linen fire hose manufactured by Charles Niedner, of Malden, Mass., wholly from imported linen yarns, are hereby extended to cover the exportation of the same merchandise of the sizes and styles specified in the sworn statement, dated April 17, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(12198.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28113.)

Drawback on shoes.

Drawback on shoes manufactured by Brennan & White, of Brooklyn, N. Y., with the use of imported cut leather soles.—T. D. 25147 of March 26, 1904, extended.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department's regulations of March 26, 1904 (T. D. 25147), providing for an allowance of drawback on shoes manufactured by the Bolton Shoe Company, of Rochester, N. Y., with the use of imported cut leather soles, are hereby extended, so far as applicable, to cover the exportation of shoes manufactured by Brennan & White, of Brooklyn, N. Y., with the use of imported leather soles, in accordance with their sworn statement, dated the 17th instant, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(44371.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28114.)

Drawback on aletris cordial rio and celerina.

Drawback on aletris cordial rio and celerina, manufactured by the Rio Chemical Company, of New York, with the use of imported alcohol and refined glycerin made from imported crude glycerin.—T. D. 24397 of April 29, 1903, extended.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department's regulations of April 29, 1903 (T. D. 24397), providing for the allowance of drawback on the exportation of aletris cordial rio and celerina, manufactured by the Rio Chemical Company, of New York, with the use of imported alcohol, are hereby extended to cover the exportation of said preparation manufactured with the quantity of imported alcohol now used with the addition of refined glycerin made from imported crude glycerin, in accordance with their sworn statement and schedule, dated April 16, 1907, transmitted herewith for filing in your office.

When the glycerin used has been refined from imported crude glycerin, the quantity of crude glycerin consumed may be determined by adding to the quantity of refined glycerin used 22 per cent of such quantity, in accordance with T. D. 17355 of August 1, 1896.

Respectfully, JAMES B. REYNOLDS,
(3942.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28115.)

Drawback on cut mica.

Drawback on cut mica manufactured by Eugene Munsell & Co., of New York City, from imported uncut mica.—T. D. 26045 of February 10, 1905, extended.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department's regulations of February 10, 1905 (T. D. 26045), providing for the allowance of drawback on the exportation of cut mica manufactured by the Mica Manufacturing Company, of New York City, wholly from imported uncut mica, are hereby extended, so far as applicable, to cover the exportation of cut mica manufactured by Eugene Munsell & Co., of New York City, wholly from imported uncut mica in accordance with their sworn statement, dated April 18, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(23177.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28116.)

Drawback on condensers.

Drawback on condensers for steam boilers manufactured by the C. H. Wheeler Manufacturing Company (Incorporated), of Philadelphia, Pa., from imported brass tubing.—T. D. 25670 of October 6, 1904, extended.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Department's regulations of October 6, 1904 (T. D. 25670), providing for the allowance of drawback on condensers for steam boilers manufactured by the Wheeler Condenser and Engineering Company, of New York City, in part from imported brass tubing, are hereby extended, so far as applicable, to cover the exportation of similar articles manufactured by the C. H. Wheeler Manufacturing Company (Incorporated), of Philadelphia, Pa., from imported brass tubing, in accordance with their sworn statement, dated April 13, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(20171.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28117.)

Drawback on asbestos packing.

Drawback on asbestos sheet packing and asbestos-metallic sheet packing manufactured by the H. W. Johns-Manville Company, of New York City, wholly with the use of imported asbestos cloth.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: On the exportation of asbestos sheet packing and asbestos-metallic sheet packing manufactured by the H. W. Johns-Manville Company, of New York City, wholly with the use of imported asbestos cloth, a drawback will be allowed equal in amount to the duty paid on the imported material so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight thereof separately and in the aggregate.

The drawback entry must show the total net weight of each kind of packing exported, and the total weight of the imported asbestos cloth used in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturer's sworn statement, dated April 15, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of asbestos cloth in condition as imported, which may be taken as the basis for the allowance of drawback, may equal the quantity declared in the drawback entry

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after official verification of exported quantities, provided such quantities shall not exceed 52.6 per cent of the net weight of the exported packing.

Respectfully, JAMES B. REYNOLDS,
(9589 *k*.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28118.)

Certificates of clearance of articles exported free of internal-revenue tax.

Ports of direct exportation and of transshipment distinguished and proper forms of certificates of exportation, etc., indicated.

TREASURY DEPARTMENT, *April 25, 1907.*

SIR: The Commissioner of Internal Revenue has brought to the attention of the Department your practice respecting certificates of exportation and certificates of transshipment and exportation provided for in articles 107 *et seq.* of internal-revenue regulations No. 29 of June 1, 1906, relating to the exportation of certain articles free of tax.

You are advised that when the export entry (Form D) is filed at your port the transaction begins there so far as the customs service is concerned, and San Francisco is to be regarded as the port of direct exportation, not of transshipment. In such cases the certificate of exportation (Form F) will be used by you. For the purpose of the regulations San Francisco is the port of transshipment only when the export entry is filed at some other port (Cincinnati for instance) for exportation via your port. In such cases you will use Form G, certificate of transshipment and exportation, upon receipt of which the collector of customs who received the export entry will issue the certificate on Form F.

You will be governed accordingly, and will promptly forward the proper certificates in all pending cases where the cancellation of the exporters' bonds is withheld awaiting such certificates from your port.

Respectfully, JAMES B. REYNOLDS,
(46153.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 28119.)

Common carrier.

Approving bond of the Mallory Steamship Company for transportation of unappraised merchandise from Galveston, Tex.

TREASURY DEPARTMENT, *April 26, 1907.*

SIR: The Department has approved the bond of the Mallory Steamship Company, transmitted by the collector at New York under date

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of the 24th instant, for the transportation of unappraised merchandise from Galveston, Tex., and transmits herewith one copy of said bond for the files of your office.

The carrier named is authorized, under said bond, to transport unappraised merchandise from Galveston, Tex., to any places in the United States which are now or may be hereafter designated by law as ports to which unappraised merchandise may be transported, in suitable cars or vessels owned or controlled by said company and running over such lines of railroads and water routes as may be necessary to reach the port of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(42356.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Galveston, Tex.*

(T. D. 28120.)

Value of foreign coins.

Boliviano standard coin of Bolivia.—The boliviano, valued at $0.50, is the standard coin of Bolivia for quarter beginning April 1, 1907.

TREASURY DEPARTMENT, *April 26, 1907.*

SIR: The Department is informed by the Director of the Mint that the peso, valued at $0.9733, is erroneously certified to the Department, and proclaimed in Department's Circular 22 of April 1, 1907, to be the standard coin of Bolivia, and that the standard coin of that country should have been estimated and proclaimed to be the boliviano, valued, for the quarter beginning the 1st instant, at $0.50. Department's Circular 22 of April 1, 1907 (T. D. 28041), is hereby modified accordingly.

Respectfully, JAMES B. REYNOLDS,
(46165.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28121.)

Drawback on leather.

Drawback on split leather manufactured by W. D. Byron & Sons, of Williamsport, Md., with the use of imported quebracho extract.—T. D. 25855 of December 19, 1904, extended.

TREASURY DEPARTMENT, *April 29, 1907.*

SIR: The Department's regulations of December 19, 1904 (T. D. 25855), providing for the allowance of drawback on the exportation of sole leather manufactured by the United States Leather Company with the use of imported quebracho extract, are hereby extended, so far as applicable, to cover the exportation of split leather manufactured by W. D. Byron & Sons, of Williamsport, Md., with the use

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of imported quebracho extract, in accordance with their sworn statement, dated April 23, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported quebracho extract shall not exceed .36 of a pound for each pound of finished split leather exported.

Respectfully, JAMES B. REYNOLDS,
(43477.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *Baltimore, Md.*

(T. D. 28122.)

Drawback on lead washers.

Drawback on lead washers manufactured by E. J. Brooks & Co. (Incorporated), of New York City, from imported lead.—T. D. 27757 of December 15, 1906, extended.

TREASURY DEPARTMENT, *April 29, 1907.*

SIR: The Department's regulations of December 15, 1906 (T. D. 27757), providing for the allowance of drawback on lead washers manufactured by the United Lead Company, of New York City, either wholly from imported pig lead or imported pig lead in combination with domestic lead, are hereby extended, so far as applicable, to the exportation of similar articles manufactured by E. J. Brooks & Co. (Incorporated), of New York City, from imported lead, in accordance with their sworn statement, dated April 8, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(42838.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28123.)

Drawback on tires.

Drawback on single tubes imported by the Continental Caoutchouc Company, of New York City, and exported with valves of domestic manufacture fitted thereto.—T. D. 26328 of April 28, 1905, extended.

TREASURY DEPARTMENT, *April 30, 1907.*

SIR: The Department's regulations of April 28, 1905 (T. D. 26328), providing for the allowance of drawback on rubber tires known as "continental," imported by the Continental Caoutchouc Company, of New York City, and exported with valves of domestic manufacture fitted thereto, are hereby extended to cover single tubes imported by the same company and exported with valves of domestic manufacture attached.

Respectfully, JAMES B. REYNOLDS,
(24005.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28124.)

Drawback on spark plugs and core centers.

Drawback on spark plugs and core centers manufactured by the R. E. Hardy Company, of New York City, with the use of imported porcelain tubes and caps or imported mica.—T. D. 27957 of March 2, 1907, extended.

TREASURY DEPARTMENT, *April 30, 1907.*

SIR: The Department's regulations of March 2, 1907 (T. D. 27957), establishing a rate for the allowance of drawback on spark plugs and core centers manufactured by A. R. Mosler & Co. (Incorporated), of New York City, with the use of imported porcelain tubes, are hereby extended, so far as applicable, to cover the exportation of "sta-rite" plugs and cores manufactured by the R. E. Hardy Company, of New York City, with the use either of imported porcelain tubes and caps or imported mica.

In addition to the requirements of said regulations, the drawback entry must show, where the exported plugs and cores are manufactured from imported mica, the weight of the mica contained therein.

In liquidation, the quantities of imported porcelain tubes and caps and mica sheets and washers, which may be taken as the basis for the allowance of drawback, may equal the quantities declared in the drawback entry after official verification of exported quantities, provided in no case shall the quantity of mica exceed 1 pound of sheet mica for each 100 plugs and cores, and 1 pound of mica washers for each 12 plugs or cores.

The manufacturers' sworn statement, dated April 20, 1907, is transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(44815.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28125.)

Drawback on thermit.

Drawback on thermit and nickel thermit manufactured by the Goldschmidt Thermit Company, of New York, with the use of imported aluminum.

TREASURY DEPARTMENT, *April 30, 1907.*

SIR: On the exportation of thermit and nickel thermit manufactured by the Goldschmidt Thermit Company, of New York City, with the use of imported aluminum, a drawback will be allowed equal in amount to the duty paid on the aluminum used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the gross and net weight of each kind of thermit contained in each package, separately and in the aggregate.

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The drawback entry must show the total net weight of thermit and nickel thermit exported, stated separately, and the percentage and quantity of imported aluminum contained in and consumed in the manufacture of each kind, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated April 25, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported aluminum, which may be taken as the basis for the allowance of drawback, may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the quantities specified in the manufacturers' sworn statement.

Samples may be taken or sworn samples furnished as ordered by the collector for required determinations.

Respectfully, JAMES B. REYNOLDS,
(44899.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28126—G. A. 6579.)

Children's books with lithographic covers.

Children's books with an illuminated lithographic cover are not dutiable under the provision in paragraph 400, tariff act of 1897, for children's books containing illuminated lithographic prints.—Dutton *v.* United States (T. D. 27983), reversing without opinion Abstract 12000 (T. D. 27458), followed.

United States General Appraisers, New York, April 26, 1907.

In the matter of protests 225938, etc., of E. P. Dutton & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of books for children's use with an illuminated lithographic print on the front cover but none on the inside pages. Duty was assessed thereon at the rate of 8 cents per pound under the concluding provision of paragraph 400, tariff act of 1897, and they are claimed to be dutiable properly at 25 per cent under paragraph 403 of said act.

The question herein raised was passed on adversely to the contention of the same importers in G. A. 5858 (T. D. 25803) and again in Abstract 12000 (T. D. 27458) on the ground that the expression "books for children's use, * * * containing illuminated lithographic prints" was not a commercial term and that, in ordinary understanding and in accordance with the dictionaries, a book "contains" what is on the cover as well as what is on the inside pages. From the latter-named decision an appeal was taken and it was reversed without opinion (T. D. 27983). The court gave no reasons for the reversal and we are unable to assign any, but as it has been acquiesced in (T. D. 28026) it has become final. Following it we sustain the protests and reverse the decision of the collector in each case.

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(T. D. 28127—G. A. 6580.)

Figured cotton cloth—Dotted vestings.

Cotton vestings that are dotted or figured by means of colored warp threads which hang loose on the reverse side and which may be removed without leaving a visible vacancy or weakening of the fabric, *Held* subject to paragraph 313, tariff act of 1897.

United States General Appraisers, New York, April 26, 1907.

In the matter of protests 159300, etc., of Henry Gitterman & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* This merchandise consists of cotton vestings. They were assessed for duty at the rate of 40 per cent ad valorem and 2 cents per square yard under the provisions of paragraphs 307 and 313, tariff act of 1897. The protestants claim that these vestings are not of the character of the merchandise provided for in paragraph 313, and therefore not subject to the additional duty therein provided. Protest 166827 makes the further claim that if the goods are subject to paragraph 313, only the specific rates in paragraph 307 can be assessed.

Paragraph 313, the construction of which is in question, reads as follows:

313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The cloth in question is dotted, the dots being produced by means of warp threads which on the reverse side hang loose, and which may be removed without leaving a visible vacancy or weakening of the fabric.

In Abstract 6610 (T. D. 26377) the Board held such merchandise subject to paragraph 313. On appeal to the circuit court for the southern district of New York, this decision was affirmed, Gitterman *v.* United States (T. D. 27975), the court following the case of Mills *v.* United States (114 Fed. Rep., 257). The importers' contention was that the decision in that case was contrary to G. A. 4639 (T. D. 21940). In regard to this the court said:

The importers place reliance upon G. A. 4639 (T. D. 21940) and have produced in court the exhibit held in that decision not to be within paragraph 313. I am unable to see that the goods under consideration in the two cases are alike; the difference is one of degree, to be sure, but in the exhibit produced the colored threads are an integral portion of the cloth; although colored, they are truly "ordinary warp" threads and contribute to the strength of the cloth. Such is not the case here. If I am wrong in believing the exhibit in T. D. 21940 as containing only *ordinary* colored warp threads, then I think that that decision was wrong.

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Following these decisions, we find the cloth in question has had other than the ordinary warp and filling threads introduced in the process of weaving to form a figure. We hold it subject to paragraph 313.

The further claim in protest 166827, that only specific rates can be assessed on goods subject to paragraph 313, is overruled on the authority of G. A. 6484 (T. D. 27728).

The protests are overruled on all grounds and the decisions of the collector affirmed.

(T. D. 28128—G. A. 6581.)

Handmade transfer and printing paper.

Handmade India transfer paper is dutiable under the provisions of paragraph 401, tariff act of 1897, as handmade paper. Said paragraph is not limited to the class of papers used for writing and drawing purposes, but applies as well to printing and other papers when handmade.—Benneche *v.* United States (T. D. 28075), affirming the circuit court (T. D. 27497) and reversing G. A. 6058 (T. D. 26440), followed.

United States General Appraisers, New York, April 26, 1907.

In the matter of protests 173075, etc., of Robert Mayer & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of a kind of handmade paper known as India transfer paper, used in the process of lithographic printing. Duty was assessed thereon at the appropriate rates provided in paragraph 401, tariff act of 1897, as handmade paper, and it is claimed to be dutiable properly under paragraph 402 of said act, as paper not specially provided for, or under paragraph 396 as printing paper.

Paper such as this was the subject of G. A. 6058 (T. D. 26440), wherein the Board found that the paper was a handmade paper and that it was specifically enumerated in paragraph 401, but felt constrained, in view of the remarks of Judge Wheeler in Miller *v.* United States (128 Fed. Rep., 469; T. D. 25006; affirmed without opinion in 135 Fed. Rep., 349; T. D. 25901), to the effect that paragraph 401 provides only for paper that is surfaced to be written on, to hold that it was relegated to the provision in paragraph 402 for paper not specially provided for. On appeal by the Government from this decision the case came before the same judge; and in United States *v.* Benneche *et al.* (T. D. 27497) he reconsidered the declaration he had previously made, his opinion being as follows:

This is found to be specifically handmade paper, which is specifically provided for under paragraph 401 of the act of 1897, and is not such as was under consideration in Miller *v.* United States (128 Fed. Rep., 469; T. D. 25006), although the remark there made would cover it, as held by the Board. That remark as made by me does

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not appear to have been sound, and was not essential to the decision, and was not approved by the mere affirmance of the decision. The question seems to be still open, and the specific designation must govern. The decision of the Board, brought about apparently by that remark, therefore is erroneous. Decision reversed.

From this ruling, the importers in turn appealed, and in the case of Benneche *v.* United States (T. D. 28075) it was affirmed, it being specifically held that the handmade papers covered by paragraph 401 are not limited to writing papers. The court said in part:

Paragraph 401 can not, as the appellants contend, be limited to the class of hard stock, hard-sized writing and drawing papers. If it had been the intention of Congress so to limit the paragraph, that intention could have been succinctly expressed by the use of the words "writing and drawing paper weighing not less," etc. The inclusion of handmade paper and typewriter paper indicates a purpose not to confine the paragraph within the narrow limits suggested, for neither is particularly suited for drawing or writing.

Furthermore, the appellants' contention overlooks the significance of the clause "but if any such paper is * * * printed or decorated in any manner." Congress evidently had in mind paper not only suitable for writing and drawing, but for printing as well. *In other words, the language specifically covers a handmade printing paper.* That the paper in question is handmade is undisputed.

The words italicized above are broad enough to warrant the inference that not only is the dictum in the Miller case (*supra*) disapproved, but that the decision itself, holding that handmade printing paper is dutiable under the provisions of paragraph 396 as printing paper, and not under paragraph 401 as handmade paper, is in effect overruled.

On the authorities cited we hold that the paper before us is dutiable as assessed, under the provisions of paragraph 401. The protests are overruled and the decision of the collector affirmed in each case.

(T. D. 28129—G. A. 6582.)

Magnesite brick not dutiable as firebrick.

Magnesite brick are not commercially understood as being included within the term "fire-brick" and are dutiable at the rate of 25 per cent ad valorem under the provisions of paragraph 87, tariff act of 1897, as "brick other than fire-brick."—G. A. 6067 (T. D. 26475) reversed; United States *v.* Hempstead (T. D. 28076) followed.

United States General Appraisers, New York, April 26, 1907.

In the matter of protests 163283, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise in question consists of magnesite brick. Duty was assessed thereon at the rate of 25 per cent ad valorem under the provisions of paragraph 87, tariff act of 1897. Protestants claim that duty should have been assessed at the rate of $1.25 per ton under paragraph 87 of said act.

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Merchandise like that now in question was the subject of G. A. 6067 (T. D. 26475) and the Board sustained the importers' contention that duty should have been assessed as claimed in these cases. From that decision an appeal was taken by the Government to the United States circuit court, eastern district of Pennsylvania, United States *v.* Hempstead (suit 1729), and the decision of the Board was reversed (T. D. 28076). Judge McPherson in his opinion, among other things, said:

It is enough, I think, to say that as the decision of the case evidently turns upon a question of fact, the Government's witnesses have satisfied me beyond doubt that "fire-brick" is a phrase with a well-known commercial designation in the trade; that it means brick made from fire clay, and that magnesite brick are not commercially understood as being included within its scope. On the contrary, when magnesite brick are wanted they are always ordered *eo nomine,* and never as "fire-brick."

On the authority of this ruling the protests are overruled and the decision of the collector is affirmed in each case.

(T. D. 28130—G. A. 6583.)

Wood flour—Manufacture of wood.

Wood flour produced by grinding pieces of wood by machinery, having about the consistency of meal when dry, *Held* to be dutiable at the rate of 35 per cent ad valorem under the provisions of paragraph 208, tariff act of 1897, as a manufacture of wood.—Nairn Linoleum Company *v.* United States (T. D. 27969), which affirmed G. A. 6325 (T. D. 27242), followed.

United States General Appraisers, New York, April 29, 1907.

In the matter of protests 183395, etc., of Nairn Linoleum Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* These protests involve the classification of wood flour, returned by the appraiser as "a manufacture of wood." Duty was assessed thereon at the rate of 35 per cent ad valorem under the provisions of paragraph 208, tariff act of 1897. The protesting company claims the merchandise is entitled to free entry either under paragraph 699 or 700, and alternatively that various lower rates of duty are applicable and that one of those should have been assessed.

Wood flour produced by grinding wood in machines and which, when finished, is about the consistency of meal similar to that here in question, was held by the Board in G. A. 6325 (T. D. 27242) to be dutiable at the rate assessed in these cases. That decision was appealed to the United States circuit court, southern district of New York, Nairn Linoleum Company *v.* United States (suit 4230), and the decision of the Board was affirmed (T. D. 27969). Judge Hough, in writing the opinion in that case, said:

Paragraph 208 enumerates "house or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, * * * not specially provided for." Under

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this language the rule of *ejusdem generis* is invoked and claim made that a substance such as wood flour should not be put in the same category with furniture. The article is undoubtedly of wood, and it is a finished manufacture, and it is not a waste or by-product. Paragraph 208 is the omnibus or catch-all clause of the wood schedule in the tariff, and appears to me to be intended to cover all finished manufactured wooden articles, however different they may be in nature or appearance from "house or cabinet furniture."

On the authority of the foregoing decision, from which no appeal has been taken by the importers, these protests are overruled and the collector's action is affirmed in each case.

(T. D. 28131—G. A. 6584.)

Precious stones—Coral.

All varieties of coral, without regard to value, suitable for use in the construction of jewelry, including branch corals strung on cotton threads and drilled corals, are dutiable as precious stones not set at the rate of 10 per cent ad valorem under paragraph 435, tariff act of 1897, and not as beads at 35 per cent ad valorem under paragraph 408, nor as manufactures of coral at 50 per cent ad valorem under paragraph 115 thereof.—G. A. 6097 (T. D. 26586), United States *v.* American Gem and Pearl Company (T. D. 26491), Benedict *v.* United States (T. D. 27032), and G. A. 6482 (T. D. 27726) cited.

United States General Appraisers, New York, April 29, 1907.

In the matter of protests 182824, etc., of Alexander Murphy & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The invoices covering the goods in question enumerate among a numerous variety of *precious stones* certain "drilled corals" and "*corail*" (coral).

The drilled corals were assessed for duty at 35 per cent ad valorem under paragraph 408, and the "*corail*" (piece of coral) at 50 per cent ad valorem under paragraph 115 of the present tariff act. The importers claim both descriptions of goods are dutiable at 10 per cent ad valorem under paragraph 435.

Coral balls or drilled corals (interchangeable terms) are in many instances of far more value than opal balls, or drilled opals, as they are also known in trade, of corresponding form and size, which, by judicial determination, are dutiable under paragraph 435 as precious stones cut but not set, and not as beads under paragraph 408. United States *v.* American Gem and Pearl Company (142 Fed. Rep., 283; T. D. 26491) and G. A. 6097 (T. D. 26586).

Rock crystal, like coral, is mentioned by name in paragraph 115; nevertheless, the circuit court for the southern district of New York has held, and in which decision the Treasury Department has acquiesced, that rock-crystal intaglios, rondelles, keystones, and other articles capable of being set or used for jewelry purposes were

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more specifically provided for in paragraph 435 than paragraph 115. United States *v.* Benedict (145 Fed. Rep., 914; T. D. 27032) and United States *v.* American Gem and Pearl Company (*supra*); see also Department's acquiescence in T. D. 25931.

In G. A. 6482 (T. D. 27726) this Board held, in accordance with the concurrent testimony of competent trade witnesses, which evidence is made a part of the record in the present case, that coral is a precious stone. Like agate and many other varieties of semiprecious stones, coral is comparatively inexpensive in bulk, but when cut or fashioned into suitable form for jewelry purposes it becomes much more valuable. Hence, without regard to value, we now reach the conclusion that all coral in form suitable for use in the construction of jewelry is dutiable under paragraph 435, and also that coral balls and branch coral on strings do not fall within the enumeration of paragraph 408.

On the authority of the decisions cited, and based on the testimony made a part of the record in this case, we find that the articles in question are precious stones cut and that they are not beads. We hold that they are dutiable at 10 per cent ad valorem under paragraph 435 and not at 35 per cent ad valorem under paragraph 408, as beads, nor at 50 per cent ad valorem under paragraph 115, as manufactures of coral.

The protests are accordingly sustained and the collector's decision in each case reversed.

(T. D. 28132.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15192.—METAL-THREAD GOODS.—Protest 243922 of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Fischer, G. A.

The goods were held to have been properly classified under paragraph 179, tariff act of 1897, as composed in chief value of metal thread.

No. 15193.—COTTON TRIMMINGS.—Protest 231101 of Neuburger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Fischer, G. A.

So-called cotton embroidery galloons were held to have been properly classified under paragraph 339, tariff act of 1897, as trimmings.

No. 15194.—TERNE PLATES.—Protest 230818 of Neurer Brothers Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Fischer, G. A.

As claimed by the importers, the merchandise was held dutiable under paragraph 134, tariff act of 1897, as tin or terne plates.

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No. 15195.—Braids.—Protest 25683 *h* of J. Zimmermann's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Howell, G. A.

A portion of the merchandise, consisting of horsehair braid, was held dutiable as silk braid by similitude, as claimed by the importers. G. A. 5590 (T. D. 25022) followed.

No. 15196.—Featherstitch Braids.—Protests 234741, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 15197.—Trimmed Hats.—Protest 159795 of Saks & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Howell, G. A.

Goods classified as wearing apparel in chief value of silk were claimed to be dutiable under paragraph 409, tariff act of 1897, as trimmed hats. Protest sustained in part.

No. 15198.—Silk Fabrics.—Protest 134896 of Stroheim & Romann against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of Abstract 14641 (T. D. 27999), relating to silk fabrics.

No. 15199.—Embroidery Cotton.—Protests 226926, etc., of Bloomingdale Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified under paragraph 303, tariff act of 1897, as embroidery cotton. G. A. 5936 (T. D. 26070) followed.

No. 15200.—Cotton Yarn.—Protest 243038 of Loeb & Schoenfeld Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by De Vries, G. A.

The protest related to No. 40 two-ply cotton yarn used on embroidery machines to lock the embroidery stitch on the fabric. On the authority of G. A. 6544 (T. D. 27915), the Board held it dutiable under paragraph 302, tariff act of 1897, as cotton yarn, as claimed by the importers, reversing the action of the collector in assessing it as embroidery cotton under paragraph 303.

No. 15201.—Cotton Twine.—Protest 244108 of Theo. H. Diener & Co. against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 2, April 23, 1907. Opinion by De Vries, G. A.

Protest overruled on the authority of Abstract 14373 (T. D. 27916), relating to cotton twine.

No. 15202.—Flax Articles.—Protest 240801 of W. D. Mitchell against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by De Vries, G. A.

As claimed by the importer, the merchandise was held dutiable under paragraph 346, tariff act of 1897, as weighing less than 4½ ounces per square yard.

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No. 15203.—Cotton Articles.—Protest 242067-24198 of T. Buettner & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 23, 1907. Opinion by De Vries, G. A.

The question was whether certain cotton articles classified under paragraph 306, tariff act of 1897, were valued at more than 11 cents per square yard, as classified, or less, as claimed by the importers. Assessment affirmed.

No. 15204.—Gauge of Olive Oil.—Protests 177331, etc., of A. Castruccio & Sons *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 23, 1907. Opinion by Somerville, G. A.

Assessment reversed on the authority of G. A. 6575 (T. D. 28072), relating to the gauge of olive oil.

No. 15205.—Gauge of Olive Oil.—Protests 208965, etc., of Casanovas & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 15204 (*supra*).

No. 15206.—Glue Stock—Rabbit Waste.—Protest 230015 of H. & A. Chapal Frères & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 23, 1907. Opinion by Somerville, G. A.

The merchandise was invoiced (1) as waste pieces of rabbit skin and (2) as waste rabbit. The importers objected to the classification of this material as waste under paragraph 463, tariff act of 1897, contending that it was free of duty as glue stock under paragraph 572. Protest sustained as to merchandise of the first description. Abstract 11999 (T. D. 27458) followed.

No. 15207.—Dutiable Weight of Tobacco.—Protests 238175, etc., of F. Miranda & Co. and protests 239251, etc., of E. Rosenwald & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 23, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 15208.—Dutiable Weight of Wool.—Protests 140751, etc., of Northeastern Trading Company, protests 189995, etc., of Tattersfield & Co. *et al.*, and protests 127168, etc., of Wood Brothers & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, April 23, 1907. Opinions by Somerville, G. A.

On the authority of United States *v.* Falk (T. D. 27832), the Board held wool to have been properly assessed with duty on the basis of its weight at the time of entry for warehouse.

No. 15209.—Dutiable Weight of Wool.—Protest 200869 of G. B. Ritchie & Co. against the assessment of duty by the collector of customs at the port of New York.

Same as No. 15208 (*supra*).

No. 15210.—Protests Abandoned.—Protests 177025, etc., of Henry Stern *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinion by Howell, G. A.

Protests abandoned; overruled.

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No. 15211.—PROTESTS UNSUPPORTED.—Protests 115947, etc., and protests 129320, etc., of G. F. A. Bondies, protest 243861 of Mark Cross Company, protest 229906 of Samuel Horowitz, and protest 183668 and protest 285801 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 23, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit

No. 15212.—PROTESTS UNSUPPORTED.—Protest 231311 of Bamberger-Stern Company and protests 229272, etc., of H. J. Frost & Co. *et al.* Opinions by Fischer, G. A.

Same as No. 15211 (*supra*).

No. 15213.—PROTESTS UNSUPPORTED.—Protests 230040, etc., of J. L. Freund & Co. *et al.* Opinion by De Vries, G. A.

Same as No. 15211 (*supra*).

No. 15214.—PROTESTS UNSUPPORTED.—Protests 200704, etc., of Morris Goldberg *et al.* Before Board 8. Opinion by Somerville, G. A.

Same as No. 15211 (*supra*).

No. 15215.—VIOLINS.—Protest 230768-23859 of R. Wurlitzer Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 24, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6417 (T. D. 27557), the Board held violins valued at more than 2 marks each not to be dutiable as toys under paragraph 418, tariff act of 1897.

No. 15216.—PINS—JEWELRY—LACE WEARING APPAREL.—Protest 57220 *b* of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, April 24, 1907. Opinion by Sharretts, G. A.

The Board held hat pins with fancy heads and brooches to have been properly classified as jewelry under paragraph 434, tariff act of 1897, and certain wearing apparel to have been properly classified under paragraph 339 relating to lace and embroidered articles. Note G. A. 6139 (T. D. 26679).

No. 15217.—HAT PINS.—Protests 243484, etc., of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 24, 1907. Opinion by Sharretts, G. A.

The merchandise, which was classified as jewelry under paragraph 434, tariff act of 1897, was claimed to be dutiable as manufactures of glass under paragraph 112. Protests sustained as to a portion of the goods on the authority of G. A. 6139 (T. D. 26679).

No. 15218.—STUFFED DUCKLINGS.—Protest 216555 of M. Seller & Co. against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 1, April 24, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 5930 (T. D. 26064), relating to stuffed ducklings.

No. 15219.—PICTORIAL POST CARDS.—Protest 218423 of Richard Behrendt against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 2, April 24, 1907. Opinion by Fischer, G. A.

As claimed by the importer, pictorial post cards were held dutiable as lithographic prints under paragraph 400, tariff act of 1897.

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No. 15220.—Pictorial Post Cards.—Protests 225713, etc., of Knauth, Nachod & Kühne against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 24, 1907. Opinion by Fischer, G. A.

The protests related to pictorial post cards classified as printed matter under paragraph 403, tariff act of 1897. The assessment was affirmed except as to the articles covered by protest 226358, which were held dutiable as lithographic prints under paragraph 400, tariff act of 1897, as claimed by the importers.

No. 15221.—Pictorial Post Cards.—Protests 251503, etc., of Newman Post Card Company against the assessment of duty by the collector of customs at the port of Los Angeles. Before Board 2, April 24, 1907. Opinion by Fischer, G. A.

Pictorial post cards classified as printed matter under paragraph 403, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. Protests sustained in part. G. A. 6369 (T. D. 27859) followed.

No. 15222.—Gauge of Olive Oil.—Protests 187668, etc., of Enrico Biggio *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. April 24, 1907.

Same as No. 15204 (*supra*).

No. 15223.—Dutiable Weight of Tobacco.—Protest 239901, etc., of E. Rosenwald & Bro. *et al.* April 24, 1907.

Same as No. 15207 (*supra*).

No. 15224.—Protests Abandoned.—Protests 178628, etc., of E. La Montagne & Sons *et al.* Before Board 3, April 24, 1907. Opinion by Somerville, G. A.

Same as No. 15210 (*supra*).

No. 15225.—Protest Unsupported.—Protest 235802 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 24, 1907. Opinion by McClelland, G. A.

Protest overruled for want of merit.

No. 15226.—Protest Unsupported —Protest 224896 of Meyer, Wilson & Co. against the assessment of duty by the collector of customs at the port of Portland, Oreg.

Same as No. 15225 (*supra*).

No. 15227.—Protest Unsupported.—Protest 242722 of Jacquemin Sennewald Flower Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15225 (*supra*).

No. 15228.—Protests Unsupported.—Protest 235689 of Bamberger-Stern Company, protest 236949 of Louis Germansky, protest 226666 of Lamb, Finlay & Co., and protests 15646 *h*, etc., of W. B. Quaintance *et al.* Before Board 2. Opinions by De Vries, G. A.

Same as No. 15225 (*supra*).

No. 15229.—Protests Unsupported.—Protests 231289, etc., of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2. Opinion by Fischer, G. A.

Same as No. 15225 (*supra*).

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No. 15230.—PROTEST UNSUPPORTED.—Protest 219376 of Edward James against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3. Opinion by Hay, G. A.

Same as No. 15225 (*supra*).

No. 15231.—OENOTANNIN.—Protest 215676, etc., of Charles Meinecke & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1, April 26, 1907. Opinion by Lunt, G. A.

So-called oenotannin was held to have been properly classified under paragraph 1, tariff act of 1897, as tannic acid or tannin. G. A. 5623 (T. D. 25151) followed.

No. 15232.—BLOOD CHAR.—Protest 204621 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, April 26, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6439 (T. D. 27609), relating to blood char.

No. 15233.—JEWELRY—HAT PINS.—Protests 238493, etc., of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 26, 1907. Opinion by Sharretts, G. A.

The protests related to hat pins classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable as manufactures of paste and glass under paragraph 112. Protests sustained as to a portion of the goods on the authority of G. A. 6139 (T. D. 26679), class 2.

No. 15234.—METAL BOWS WITH PINS.—Protests 228698-23836, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 26, 1907. Opinion by Sharretts, G. A.

The protests related to small bows made of very thin metal, severally fitted with a pin at the back. To the center of each bow a circular metal frame about one-half inch in diameter containing a lithographic print representing a religious subject is attached by a wire ring. The importer contended they were improperly classified as jewelry under paragraph 434, tariff act of 1897, and were dutiable as manufactures of metal under paragraph 193. The Board found the articles to be cheap and flimsy in construction and not to be jewelry. Protests sustained.

No. 15235.—ARTIFICIAL FRUITS OF PLASTER OF PARIS.—Protests 242452, etc., of B. Shackman & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 26, 1907. Opinion by McClelland, G. A.

The protests related to artificial fruits composed of plaster of paris covered with wax, in form, size, and coloring representing natural fruits. The Board held these articles to have been properly classified under paragraph 425, tariff act of 1897, as artificial fruits.

No. 15236.—LITHOGRAPHIC PRINTS IN PART OF SILK.—Protest 232070-24061 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 26, 1907. Opinion by Fischer, G. A.

The protest related to cards ornamented with flowers, the petals of which are made of silk. The Board found these articles to have been printed by the lithographic process, and, on the authority of G. A. 4959 (T. D. 23169) and G. A. 6041 (T. D. 26370), held them dutiable as lithographic prints under paragraph 400, tariff act of 1897, as claimed by the importer.

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No. 15237.—Gold-Plated Pins.—Protests 227303-23396, etc., of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 26, 1907. Opinion by Fischer, G. A.

Gold-plated lace pins were held to have been properly classified as manufactures of metal under paragraph 193, tariff act of 1897.

No. 15238.—Silk Veilings.—Protests 240798, etc., of S. Oppenheimer & Levy *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinion by Howell, G. A.

Goods 45 centimeters wide were held to have been properly classified as veilings under paragraph 390, tariff act of 1897.

No. 15239.—Silk Hats.—Protest 238515 of H. B. Claflin Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinion by Howell, G. A.

The goods consisted of hats, which were held to have been properly classified as silk wearing apparel under paragraph 390, tariff act of 1897.

No. 15240.—Silk Fabrics.—Protests 175588, etc., of G. F. A. Bondies against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under paragraph 387, tariff act of 1897, as silk fabrics. Note G. A. 6508 (T. D. 27796).

No. 15241.—Lace Wearing Apparel.—Protests 20587 *h*, etc., of Rosenthal & Grotta *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 5866 (T. D. 25844), relating to lace wearing apparel.

No. 15242.—Advertising Tape.—Protest 221885-23380 of A. J. Weiss against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 26, 1907. Opinion by De Vries, G. A.

Protest overruled on the authority of G. A. 5557 (T. D. 24943), relating to advertising tape.

No. 15243.—Loofah Sponges—Brushes.—Protest 242773 of George E. Evans Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinion by De Vries, G. A.

The protest related to articles invoiced as loofah sponges, which consist of a sponge inclosed in a cotton net and having a fibrous vegetable substance sewed on to the net. The Board held them to have been properly classified as manufactures of vegetable fiber under paragraph 347, tariff act of 1897, overruling the importers' contention that they were dutiable as brushes under paragraph 410.

No. 15244.—Work of Art—Rail for Altar.—Protest 226500 of Leland & Hall Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 26, 1907. Opinion by Waite, G. A.

The protest related to an altar railing imported for presentation to a cathedral. It is executed in white Carrara marble, and well covered with sculptural embellishment, of which much is intricate in design. On the authority of the United States *v.* Ecclesiastical Art Works (142 Fed. Rep., 1038; T. D. 26945), the Board held the railing free of duty under paragraph 703, tariff act of 1897, as a work of art imported for presentation to a church.

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No. 15245.—ANTIPASTO.—Protests 224626, etc., of E. M. Gualdi & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 26, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of G. A. 6535 (T. D. 27886), relating to antipasto.

No. 15246.—DUTIABLE WEIGHT OF TOBACCO.—Protests 214718, etc., of I. Bijur & Son *et al.*, protests 218222, etc , of Jos. Hirsch & Son, protests 220692, etc., of Pretzfeld & Co., and protests 222554, etc., of Lewis Sylvester & Son. April 26, 1907.

Same as No. 15207 (*supra*).

No. 15247.—PROTESTS ABANDONED.—Protests 56256*f*, etc., of Simpson, Crawford & Simpson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 26, 1907. Opinion by McClelland, G. A.

Protests abandoned; overruled.

No. 15248.—PROTEST ABANDONED.—Protest 210825 of J. J. Buchey & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Opinion by Sharretts, G. A.

Same as No 15207 (*supra*).

No. 15249.—PROTESTS UNSUPPORTED.—Protest 244515 of International Forwarding Company and protests 227166 and 242092 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 26, 1907. Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 15250.—PROTESTS UNSUPPORTED.—Protest 230764 of Chas. D. Stone & Co. and protest 227304 of G. W. Sheldon & Co. Opinions by Lunt, G. A.

Same as No. 15249 (*supra*).

No. 15251.—PROTEST UNSUPPORTED.—Protest 226741 of G. Mulet against the assessment of duty by the collector of customs at the port of San Juan. Opinion by Lunt, G. A.

Same as No. 15249 (*supra*).

No. 15252.—PROTESTS UNSUPPORTED.—Protest 18865*h* of Estate of C. B. Rouss and protests 3980*h*, etc., of Simpson Crawford Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 26, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 15253.—PROTESTS UNSUPPORTED.—Protests 243767, etc., of Konvalinka & Weiss *et al.* Before Board 3. Opinion by Hay, G. A.

Same as No. 15252 (*supra*).

No. 15254.—PROTEST UNSUPPORTED.—Protest 216644 of Kerr, Gifford & Co. against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 3. Opinion by Somerville, G. A.

Same as No. 15252 (*supra*).

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No. 15255.—Toy Violins.—Protests 210085–22287, etc., of Rudolph Wurlitzer Company. April 29, 1907.

Same as No. 15215 (*supra*).

No. 15256.—Toy Paint Boxes.—Protest 242984 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Paint boxes were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers. G. A. 5697 (T. D. 25355) followed.

No. 15257.—Manufactures of Metal—Jewelry.—Protest 242932 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Goods classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable under paragraph 193 as manufactures of metal. Protest sustained in part.

No. 15258.—Reconstructed Rubies.—Protest 238506 of R. A. Breidenbach against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6336 (T. D. 27278), relating to reconstructed rubies.

No. 15259.—Jewelry—Amber Necklace Snaps.—Protest 238507 of R. A. Breidenbach against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Completed amber necklace snaps were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15260.—Toy Bracelets.—Protests 235751, etc., of American Bead Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

A portion of the goods (bracelets) was held dutiable under paragraph 418, tariff act of 1897, as toys, as claimed by the importers. G. A. 6297 (T. D. 27156) followed.

No. 15261.—Toy Necklaces.—Protest 233274 of M. D. Levy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

The protest related to necklaces which were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importer. G. A. 6027 (T. D. 26335) followed.

No. 15262.—Imitation Precious Stones.—Protest 230440 of D. S. Hesse & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Goldstones and imitation rubies were held to have been properly classified under paragraph 435, tariff act of 1897, as imitation precious stones. G. A. 6089 (T. D. 26555) followed.

No. 15263.—Unstrung Beads.—Protests 225988, etc., of A. Lorsch & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified as unstrung beads under paragraph 408, tariff act of 1897.

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No. 15264.—Beaded Trimmings.—Protest 212112 of A. H. Ringk & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified under paragraph 408, tariff act of 1897, as beaded trimmings.

No. 15265.—Spangled Articles.—Protest 106907 of Garrison, Wright & Co. and protest 180819 of Louis Metzger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinions by Sharretts, G. A.

The goods were held properly classified under paragraph 408, tariff act of 1897, relating to spangled articles. G. A. 6323 (T. D. 27240) followed.

No. 15266.—Muff Chains.—Protest 51949*f* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Goods classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of metal under paragraph 193. Protest sustained as to muff chains composed chiefly of base metal. Abstract 5635 (T. D. 26248) followed.

No. 15267.—Ornaments.—Protests 28783*f*, etc., of James McCreery & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6374 (T. D. 27382), relating to ornaments.

No. 15268.—Ornaments.—Protests 242907, etc., of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of ornaments, was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

No. 15269.—Pins.—Protests 237056, etc., of Dieckerhoff, Raffloer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of pins, was held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6139 (T. D. 26679) followed.

No. 15270.—Pins—Ornaments.—Protests 238529, etc., of Guthman, Solomons & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

The merchandise, which was classified as jewelry under paragraph 434, tariff act of 1897, was claimed to be dutiable as manufactures of the component material of chief value. This contention was sustained as to lace pins, base-metal buckles, combs of pyroxylin and metal (metal chief value), and hat pins with pyroxylin tops. Abstract 12774 (T. D. 27602), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390) followed.

No. 15271.—Pictorial Post Cards.—Protest 243606 of W. G. MacFarlane against the assessment of duty by the collector of customs at the port of Buffalo. Before Board 2, April 29, 1907. Opinion by Fischer, G. A.

Pictorial post cards, classified as printed matter under paragraph 403, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. Protest sustained in part.

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No. 15272.—MASKS—LITHOGRAPHIC PRINTS.—Protest 229303 of Arthur Otto against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 29, 1907. Opinion by Fischer, G. A.

Articles classified as masks under paragraph 451, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. Protest overruled.

No. 15273.—FEATHERSTITCH BRAIDS.—Protest 242075-24170 of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 29, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 15274.—DUTIABLE WEIGHT OF TOBACCO.—Protests 248764, etc., of American Cigar Company *et al.*, protests 223705, etc., of E. Hoffman & Son *et al.*, and protests 224454, etc., of J. Holzman *et al.* April 29, 1907.

Same as No. 15207 (*supra*).

No. 15275.—GAUGE OF OLIVE OIL.—Protests 186207, etc., of P. Pastene & Co. *et al.* April 29, 1907.

Same as No. 15204 (*supra*).

No. 15276.—PROTEST ABANDONED.—Protest 51582*f* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 29, 1907. Opinion by Sharretts, G. A.

Protest abandoned; overruled.

No. 15277.—PROTEST ABANDONED.—Protest 186939 of Wilfred Schade & Co. *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by McClelland, G. A.

Same as No. 15276 (*supra*).

No. 15278.—PROTESTS ABANDONED.—Protests 66980*f*, etc., of Spiegelberg & Co. *et al.* Before Board 2. Opinion by Fischer, G. A.

Same as No. 15276 (*supra*).

No. 15279.—PROTESTS ABANDONED.—Protests 210928, etc., of Austin, Nichols & Co. *et al.* Before Board 3. Opinion by Somerville, G. A.

Same as No. 15276 (*supra*).

No. 15280.—PROTEST UNSUPPORTED.—Protest 235691 of Bamberger-Stern Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 29, 1907. Opinion by Fischer, G. A.

Protest overruled for want of merit.

No. 15281.—PROTEST UNSUPPORTED.—Protest 242667 of International Forwarding Company against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15280 (*supra*).

No. 15282.—PROTEST BY UNAUTHORIZED PARTY.—Protest 230832 of H. L. C. Park against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 29, 1907. Opinion by Hay, G. A.

The protest, which related to an entry by H. L. Clark, was signed H. L. C. Park. Held that as the latter does not appear to be the owner, importer, consignee, or agent of the merchandise, the protest should be dismissed because not filed by an authorized party. Note Abegg *v.* United States (71 Fed. Rep., 960).

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(T. D. 28133.)

Drawback on carded wool.

Drawback on carded wool manufactured by E. S. Parkhurst & Co., of Gloversville, N. Y., with the use of imported wool in the grease.

TREASURY DEPARTMENT, *May 3, 1907.*

SIR: On the exportation of carded wool manufactured by E. S. Parkhurst & Co., of Gloversville, N. Y., wholly with the use of imported wool in the grease, a drawback will be allowed equal in amount to the duty paid on the imported wool so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the net weight of the carded wool contained in each package and in the entire shipment.

The drawback entry must show the total net weight of carded wool exported and the quantity of wool in condition as imported, consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 6, 1907, transmitted herewith for filing in your office. There shall be attached to each entry a sworn abstract of the manufacturing record in the form given in said sworn statement.

In liquidation, the quantity of imported wool which may be taken as the basis for the allowance of drawback may equal that declared in the drawback entry, after official verification of exported quantities, provided the same shall not exceed the net weight of the carded wool exported with the proper quantity added thereto to compensate for the loss resulting from scouring and carding, as shown in the sworn abstract filed with the entry.

Respectfully, JAMES B. REYNOLDS,
(44613.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28134.)

Cancellation of drawback bonds—Landing certificates.

T. D. 27939 of February 25, 1907, extended to cover exportations by land.

TREASURY DEPARTMENT, *May 3, 1907.*

SIR: In reply to your letter of the 9th ultimo, I have to advise you that T. D. 27939 of February 25, 1907, Circular 13, relating to evidence of landing abroad for the cancellation of drawback bonds, may be applied to exportations by land, in which case where the amount of drawback exceeds $100, the bond may be canceled upon the production of a landing certificate sworn to by the consignee

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before a notary public or other officer administering oaths and having an official seal, or a landing certificate signed by the foreign revenue officer.

Respectfully, JAMES B. REYNOLDS,
(43322.) *Acting Secretary.*
SURVEYOR OF CUSTOMS, *St. Louis, Mo.*

(T. D. 28135.)

Drawback on pumps.

Drawback on pumps manufactured by W. & B. Douglas (Incorporated), of Middletown, Conn., with the use of imported pig iron.—T. D. 28013 of March 19, 1907, extended.

TREASURY DEPARTMENT, *May 4, 1907.*

SIR: The Department's regulations of March 19, 1907 (T. D. 28013), establishing a rate for the allowance of drawback on pumps and pumping machinery manufactured by the Jeanesville Iron Works Company, of Hazleton, Pa., with the use of imported pig iron, are hereby extended, so far as applicable, to cover pumps manufactured by W. & B. Douglas (Incorporated), of Middletown, Conn., wholly or in part with the use of imported pig iron in accordance with their sworn statement, dated March 28, 1907, transmitted herewith for filing in your office.

In addition to the requirements of said regulations, the drawback entry must show the net weight and current value of the scrap resulting in the process of manufacture and the price paid at the works for the imported pig iron.

In liquidation, the quantity of pig iron which may be taken as the basis for the allowance of drawback may equal the quantity shown in the drawback entry, after official verification of exported quantities, provided it shall not exceed the net weight of the imported iron contained in the exported pumps, with an addition of 5 per cent of such weight to compensate for loss in melting, and an allowance for valuable waste in proportion to the value of such waste at the time of manufacture and the price paid at the works for the imported material.

Respectfully, JAMES B. REYNOLDS,
(45819.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28136.)

Drawback on fittings, pipe connections, valves, cocks, and pipe machinery.

Drawback on flanged and screwed fittings, pipe connections, valves, cocks, and pipe machinery manufactured by the Eaton, Cole & Burnham Company, of Bridgeport, Conn., with the use of imported pig iron.

TREASURY DEPARTMENT, *May 4, 1907.*

SIR: On the exportation of flanged and screwed fittings, pipe connections, valves, cocks, and pipe machinery manufactured by the

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Eaton, Cole & Burnham Company, of Bridgeport, Conn., with the use, wholly or in part, of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the contents thereof, and the gross and net weight of each package stated separately and in the aggregate.

The drawback entry must show the total net weight of the articles exported, and to the said entry shall be attached a sworn transcript from the manufacturing records, showing the net weight of the imported pig iron consumed and contained therein, the net weight and current value of the scrap and the price at the mill of the imported pig iron. In addition to the usual averments said entry should show that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated February 15, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, provided the same shall not exceed the net weight of the imported pig iron contained in the exported articles, with an addition of 5 per cent of such weight to compensate for loss in melting and an allowance for valuable waste in proportion to the value of such waste at the time of manufacture, and the price paid at the works for the imported material.

Respectfully, JAMES B. REYNOLDS,
(45818.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28137.)

Drawback on liquid tanning extract.

Drawback on crescent liquid quebracho manufactured by Messrs. Marden, Orth & Hastings, of Boston, Mass., with the use of imported solid quebracho extract.—T. D. 27926 of February 15, 1907, extended.

TREASURY DEPARTMENT, *May 7, 1907.*

SIR: The Department's regulations of February 15, 1907 (T. D. 27926), providing for the allowance of drawback on the exportation of liquid tanning extract manufactured by the Bulls Ferry Chemical Company, of Shady Side, N. J., with the use of imported solid quebracho extract, are hereby extended, so far as applicable, to cover the exportation of crescent liquid quebracho manufactured by Messrs. Marden, Orth & Hastings, of Boston, Mass., with the use of imported quebracho, in accordance with their sworn statement, dated April 24, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(43132.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

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(T. D. 28138.)

Drawback on castings.

Drawback on castings manufactured by the West Side Foundry Company, of Troy, N. Y., with the use of imported pig iron.

TREASURY DEPARTMENT, *May 7, 1907.*

SIR: On the exportation of castings manufactured by the West Side Foundry Company, of Troy, N. Y., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages or articles, and the gross and net weight of each package or article separately and in the aggregate.

The drawback entry must show the total quantity of castings exported, the percentage and quantity of imported pig iron contained therein and the quantity consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated April 24, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, provided it shall not exceed the net weight of the imported pig iron contained in the castings with 5 per cent of such weight added thereto to compensate for loss in the manufacture.

Respectfully, JAMES B. REYNOLDS,
(46374.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28139.)

Drawback on automatic mechanical stokers.

Drawback on automatic mechanical stokers manufactured by the Lorenna Foundry Company, of Bridgeport, Pa., with the use of imported pig iron.

TREASURY DEPARTMENT, *May 7, 1907.*

SIR: On the exportation of automatic mechanical stokers, consisting of iron castings manufactured by the Lorenna Foundry Company, of Bridgeport, Pa., in part from imported pig iron, a drawback will be allowed on the imported material so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, and the gross and net weight thereof stated separately and in the aggregate.

The drawback entry must show the total quantity of castings exported, the percentage and quantity of imported pig iron contained therein, and the quantity consumed in the manufacture thereof,

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and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 29, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported pig iron contained in the exported castings with an allowance for wastage not to exceed 4 pounds for each 100 pounds of imported material consumed.

Respectfully, JAMES B. REYNOLDS,
(43672.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28140.)

Drawback on stoves, ranges, steam and hot-water boilers, pipes, etc.

Drawback on stoves, ranges, steam and hot-water boilers, soil pipe and fittings, and plumbers' supplies manufactured by Abendroth Brothers (Incorporated), of Port Chester, N. Y., in part with the use of imported pig iron.

TREASURY DEPARTMENT, *May 7, 1907.*

SIR: On the exportation of stoves, ranges, steam and hot-water boilers, soil pipe and fittings, and plumbers' supplies manufactured by Abendroth Brothers (Incorporated), of Port Chester, N. Y., in part with the use of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the total number of each of said articles contained therein, together with the gross and net weight of said packages stated separately and in the aggregate.

The drawback entry must show the total net weight of each kind of article exported, the percentage and quantity of imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated April 12, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the amount declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported pig iron contained in the exported articles with 4 per cent of such weight added thereto to compensate for the loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(45143.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28141.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15283.—Tannic Acid.—Protest 229934 of J. Pacheteau against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 5623 (T. D. 25151), relating to tannic acid.

No. 15284.—Pocket Mirrors.—Protest 227311-23455 of N. Shure Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Pocket mirrors were held to have been properly classified as manufactures in chief value of glass under paragraph 112, tariff act of 1897.

No. 15285.—Celluloid Combs.—Protest 238535 of A. J. Hague & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

The merchandise was classified as jewelry under paragraph 434, tariff act of 1897. A portion of it (combs) was held dutiable as celluloid articles under paragraph 17, as claimed by the importers. Abstract 12774 (T. D. 27602) followed.

No. 15286.—Drumheads.—Protest 242725 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Lyon *v.* United States (T. D. 25832), relating to drumheads.

No. 15287.—Manufactures of Paper.—Protest 248840 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Newport News. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

The merchandise, classified as articles of celluloid, was held dutiable as manufactures in chief value of paper under paragraph 407, tariff act of 1897, as claimed by the importers.

No. 15288.—Reconstructed Rubies.—Protests 237501, etc., of Albert Lorsch & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6336 (T. D. 27278), relating to reconstructed rubies.

No. 15289.—Silver Buttons—Jewelry.—Protests 36930*f*, etc., of C. L. Tiffany *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

On the authority of Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316), the following articles were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers: Silver frames or mountings for chatelaine bags; silver ornaments in the form of buttons, intended to be permanently attached to women's garments; silver mesh purses with chain attached; silver flacons with chain, intended as holders for smelling salts. The remainder of the goods was held to have been properly classified as jewelry under paragraph 434, tariff act of

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1897, these articles consisting of belt buckles and clasps, cloak clasps, and girdles and belts, all composed of silver and designed for personal adornment. The Board observed: "Silver is largely used in the manufacture of articles of utility as well as jewelry, and we do not think that buttons or disks intended to be permanently sewn on garments, or that smelling bottles, purses, or chatelaine bags intended to be carried in the hand, are commonly known as jewelry."

No. 15290.—ORNAMENTED GILT BUCKLES.—Protest 243860 of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Gilt metal belt buckles ornamented with polished steel points were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers. Blumenthal *v.* United States (T. D. 27397) followed.

No. 15291.—LEATHER BAGS, ETC.—Protests 235797, etc., of P. W. Lambert & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Leather bags, belts, and purses, ornamented with beads, were held dutiable as manufactures in chief value of leather under paragraph 450, tariff act of 1897, as claimed by the importers. Abstract 14765 (T. D. 28036) followed.

No. 15292.—ORNAMENTS.—Protests 237041, etc., of B. Blumenthal & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Certain ornaments were held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6374 (T. D. 27382) followed.

No. 15293.—ORNAMENTS—JEWELRY.—Protest 240646 of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Goods classified as jewelry under paragraph 434, tariff act of 1907, were claimed to be dutiable as manufactures of the component of chief value. This contention was sustained as to metal buckles for belts, and overruled as to necklaces and chains composed of beads and ornamented metal, and as to crosses of gilt metal set with imitation precious stones.

No. 15294.—BAGS OF LEATHER AND METAL.—Protest 22623 *h* of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

The protest related to bags. As claimed by the importers, some were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, and others as manufactures of leather under paragraph 450.

No. 15295.—DECORATED GLASSWARE—SILVERED TUBES—PEAR-SHAPED BEADS.—Protest 108850 of T. Strasburger against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

The merchandise, which was classified under paragraph 100, tariff act of 1897, as decorated glassware, consisted of glass tubes known in trade as bugles, colored or silvered for decorative purposes, being approximately from 1½ to 3 inches long and 1⅛ of an inch in diameter; also of pear-shaped beads. The tubes were held to have been properly classified, but, as claimed by the importer, the beads were held dutiable under paragraph 408, relating to unstrung beads.

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No. 15296.—ORNAMENTS—JEWELRY—BEADED GOODS.—Protests 117428, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Pins with plain heads and base metal buckles were held dutiable as manufactures of the component of chief value, as claimed by the importers. On the authority of G. A. 6139 (T. D. 26679) and G. A. 6374 (T. D. 27382), the following articles were held to have been properly classified either as jewelry under paragraph 434, tariff act of 1897, or as beaded articles under paragraph 408: Bead chains and holders, bead fringes, hat pins with ornamental heads, and brooches.

No. 15297.—WATCH FOBS.—Protest 128165 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Silver-plated watch fobs were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15298.—HAT PINS.—Protest 231211 of Geo. C. Poirier against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

A portion of the merchandise, consisting of hat pins similar to those covered by finding 2 in G. A. 6139 (T. D. 26679), was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers. The remaining articles were held to have been properly classified as jewelry under paragraph 434.

No. 15299.—METAL COMBS—GILDED PINS.—Protest 221676-23238 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

One portion of the goods consisted of solid-head pins gilded, which the Board held to be plated and therefore excluded from paragraph 188, tariff act of 1897, and to have been properly classified as manufactures of metal under paragraph 193. The remaining goods consisted of combs which, on the authority of Abstract 12774 (T. D. 27602), were held dutiable under said paragraph 193, as claimed by the importers.

No. 15300. — PINS — ORNAMENTS. — Protest 210894 of Strawbridge & Clothier against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, April 30, 1907. Opinion by Sharretts, G. A.

Protest sustained as to portions of the goods, consisting of hat pins and of buckles and long chains in chief value of base metal, these articles being held dutiable as manufactures of the component of chief value. Abstract 5635 (T. D. 26248), G. A. 6374 (T. D. 27382) and G. A. 6376 (T. D. 27390) followed.

No. 15301.—ORCHIL EXTRACT.—Protest 207668 of Berlin Aniline Works against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6048 (T. D. 26383), relating to orchil extract.

No. 15302.—FROG SKINS TANNED—FISHSKINS.—Protest 235805 of Mogi, Momoni & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinion by McClelland, G. A.

Frog skins, reported by the appraiser to be used in making pocket books, were classified under the provision in paragraph 438, tariff act of 1897, for dressed and finished skins. The importers contended they were free of duty under paragraph 556 as fishskins. Assessment affirmed.

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No. 15303.—Prussian Blue.—Protest 219204 of Baquero & Gandara against the assessment of duty by the collector of customs at the port of San Juan. Before Board 1, April 30, 1907. Opinion by McClelland, G. A.

The merchandise, which was invoiced as wash blue and was classified as Prussian blue under paragraph 45, tariff act of 1897, was claimed to be dutiable under paragraph 52, relating to wash blue containing ultramarine. Protest overruled.

No. 15304.—Fishhooks.—Protests 215622, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, April 30, 1907. Opinion by Fischer, G. A.

Fishhooks assessed with duty at the rate of 40 per cent ad valorem plus 1¼ cents per pound under paragraph 137, tariff act of 1897, were claimed to be dutiable under the provision in the same paragraph for articles made of wire valued at not over 4 cents per pound. This contention was sustained as to a portion of the goods on the authority of G. A. 6494 (T. D. 27764).

No. 15305.—Hunting Crops and Whips.—Protest 202104 of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 30, 1907. Opinion by Fischer, G. A.

The goods consisted of hunting crops and whips. As claimed by the importers, a portion was held dutiable under paragraph 450, tariff act of 1897, as manufactures in chief value of leather, and another portion under paragraph 449 as manufactures of whalebone.

No. 15306.—Pictorial Post Cards.—Protests 226662, etc., of Knauth, Nachod & Kühne *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, April 30, 1907. Opinion by Fischer, G. A.

Pictorial post cards classified as printed matter under paragraph 403, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. This contention was sustained in part. G. A. 6369 (T. D. 27859) followed.

No. 15307.—Pictorial Post Cards.—Protests 227115-23290, etc., of American Shipping Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15306 (*supra*).

No. 15308.—Fancy Paper Boxes.—Protests 227294-23748, etc., of American Shipping Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, April 30, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 14532 (T. D. 27945), relating to fancy paper boxes.

No. 15309.—Slippers of Straw and Cotton.—Protests 224059, etc., of China and Japan Importing Company *et al.* against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 2, April 30, 1907. Opinion by De Vries, G. A.

It appeared that certain slippers, classified as composed chiefly of cotton, were in fact composed in chief value of straw; but as the record failed to show what items of the invoice were of this description the importers' contention was overruled.

No. 15310.—Preserved Pineapples.—Protests 93522*f*, etc., of J. S. Johnson Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 30, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of United States *v.* Johnson (T. D. 27830), relating to preserved pineapples.

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No. 15311.—Dutiable Weight of Tobacco.—Protests 222325, etc., of Leonard Friedman & Co. *et al.*, protests 240902, etc., of K. Mandell & Co. *et al.*, protests 224234, etc., of Marcelino Perez & Co. *et al.*, and protests 250610, etc., of M. F. Schneider *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, April 30, 1907. Opinions by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 15312.—Petroleum Products.—Protests 231172, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, April 30, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of G. A. 6405 (T. D. 27507), relating to petroleum products.

No. 15313.—Cigar Fans.—Protest 231280 of Frank P. Dow against the assessment of duty by the collector of customs at the port of Port Townsend. Before Board 3, April 30, 1907. Opinion by Hay, G. A.

Fans in the form of cigars, which were classified as fans under paragraph 427, tariff act of 1897, were claimed to be dutiable under paragraph 418 as toys. Protest overruled. Abstract 11881 (T. D. 27458) noted.

No. 15314.—Protests Abandoned.—Protests 243037, etc., of Lehn & Fink and protests 243248, etc.; of Sun Kwong On *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinions by Lunt, G. A.

Protests abandoned; overruled.

No. 15315.—Protest Abandoned.—Protest 243939 of A. & H. Veith. Opinion by Sharretts, G. A.

Same as No. 15314 (*supra*).

No. 15316.—Protests Unsupported.—Protest 162259 of Geo. Borgfeldt & Co., protest 179414 of Thomas & Pierson, and protest 235783 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, April 30, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 15317.—Protest Unsupported.—Protest 230405 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15316 (*supra*).

No. 15318.—Protest Unsupported.—Protest 243011 of Hensel, Bruckmann & Lorbacher. Opinion by Lunt, G. A.

Same as No. 15316 (*supra*).

No. 15319.—Protests Unsupported.—Protests 234753, etc., of F. B. Vandegrift & Co. *et al.* Before Board 2. Opinion by Fischer, G. A.

Same as No. 15316 (*supra*).

No. 15320.—Accordions with Ten Keys.—Protests 242481, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Accordions with 10 keys, which were classified as musical instruments under paragraph 453, tariff act of 1897, were claimed to be dutiable under paragraph 418 as toys. Protests overruled.

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No. 15321.—Pins—Ornaments.—Protest 145821 of Stern Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Pins and dress ornaments, which were classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of the component material of chief value. This contention was sustained as to certain ornaments. Note G. A. 6374 (T. D. 27382) and G. A. 6376 (T. D. 27390).

No. 15322.—Hat Pins.—Protest 243725 of R. L. Cochran Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Hat pins, similar to those included in class 1 of G. A. 6139 (T. D. 26679), were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15323.—Toy Necklaces.—Protest 233246 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, flimsy necklaces were held dutiable as toys under paragraph 418, tariff act of 1897.

No. 15324.—Lapis Lazuli in Slabs—Precious Stones.—Protest 225987 of John Lamont & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Thin slabs of lapis lazuli were held to have been properly classified under paragraph 435, tariff act of 1897, as precious stones advanced in condition.

No. 15325.—Imitation Pearls.—Protest 17568*h* of Marcel Schmitt against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Imitation pearls were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897, as claimed by the importer. G. A. 6088 (T. D. 26554) followed.

No. 15326.—Imitation Precious Stones.—Protest 158777 of G. Hirsch's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 1, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6380 (T. D. 27420), relating to imitation precious stones.

No. 15327.—Crochet Needles.—Protest 231330 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 1, 1907. Opinion by Fischer, G. A.

As claimed by the importers, the goods were held dutiable under paragraph 165, tariff act of 1897, as crochet needles.

No. 15328.—Cotton Trimmings.—Protest 242691-24240 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 1, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under paragraph 339, tariff act of 1897, as cotton trimmings.

No. 15329.—Protests Abandoned.—Protests 212463, etc., of Bailey, Green & Elger against the assessment of duty by the collector of customs at the port of New York. Before Board 2. May 1, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

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No. 15330.—PROTEST ABANDONED.—Protest 281674 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15329 (*supra*).

No. 15331.—PROTESTS ABANDONED.—Protests 5104*h*, etc., of A. Steinhardt & Bro. *et al.* Opinion by Howell, G. A.

Same as No. 15329 (*supra*).

No. 15332.—PROTEST ABANDONED.—Protest 218856 of Block Light Company. Before Board 1. Opinion by Sharretts, G. A.

Same as No. 15329 (*supra*).

No. 15333.—PROTESTS UNSUPPORTED.—Protest 237484 of Isler & Guye and protests 230545, etc., of A. L. Tuska against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 1, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 15334.—PROTEST UNSUPPORTED.—Protest 192614-20490, etc., of Sears, Roebuck & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15333 (*supra*).

No. 15335.—PROTEST UNSUPPORTED.—Protest 243760 of A. Hilbert. Opinion by Howell, G. A.

Same as No. 15333 (*supra*).

No. 15336.—PROTEST UNSUPPORTED.—Protest 134683 of H. Wolf & Co. Before Board 1. Opinion by Sharretts, G. A.

Same as No. 15333 (*supra*).

No. 15337.—IMITATION PEARLS.—Protest 132866, etc., of Nordlinger & Mamluck against the assessment of duty by the collector of customs at the port of Providence. Before Board 1, May 3, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6088 (T. D. 26554), relating to imitation pearls.

No. 15338.—OPAL BALLS—IMITATION PRECIOUS STONES.—Protest 96489*f* of William H. Stiner & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 3, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6097 (T. D. 26586) and G. A. 6167 (T. D. 26770), the protest was sustained so far as it related to opal balls and to certain imitation precious stones.

No. 15339.—IMITATION PARCHMENT PAPER.—Protest 230112 of W. H. Allison against the assessment of duty by the collector of customs at the port of Detroit. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6232 (T. D. 26918), relating to imitation parchment paper.

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No. 15340.—Pamphlets in Foreign Language.—Protest 242889 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

The merchandise was held free of duty under paragraph 502, tariff act of 1897, as pamphlets printed exclusively in a foreign language.

No. 15341.—Lithographic Box Tops.—Protest 225288 of Thomas Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

On the authority of G. A. 5873 (T. D. 25863), box tops were held to have been properly classified as lithographic prints under paragraph 400, tariff act of 1897.

No. 15342.—Pictorial Post Cards.—Protest 243799 of C. B. Richard & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Pictorial post cards printed by the lichtdruck process were held to have been properly classified as printed matter under paragraph 403, tariff act of 1897.

No. 15343.—Bristol Board.—Protests 194843, etc., of Western Card and Paper Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of G. A. 6354 (T. D. 27322), relating to bristol board.

No. 15344.—Metal Bullion.—Protest 215675 of B. Pasquale Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

The merchandise was held dutiable as metal bullion under paragraph 179, tariff act of 1897, as claimed by the importers.

No. 15345.—Fish Flies.—Protest 225872 of Geo. Tritch Hardware Company against the assessment of duty by the surveyor of customs at the port of Denver. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Fish flies classified as composed in chief value of metal were claimed to be in chief value of gut. Assessment affirmed.

No. 15346.—Artificial Silk Gloves.—Protests 227306-23406, etc., of Chas. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Gloves found to be composed in chief value of artificial silk were held to have been properly classified as silk wearing apparel by similitude under paragraph 390, tariff act of 1897.

No. 15347.—Ignition Cable—Manufactures of Rubber.—Protest 230363 of Packard Motor Car Company against the assessment of duty by the collector of customs at the port of Detroit. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

So-called ignition cable, classified under paragraph 137, tariff act of 1897, relating to articles manufactured from wire, was held dutiable as manufactures in chief value of rubber under paragraph 449, as claimed by the importers.

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No. 15348.—Compasses With Mirror Back.—Protest 244503-24259 of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 3, 1907. Opinion by Fischer, G. A.

Compasses 1¾ inches in diameter, set in metal frames with glass front and mirror back, were held not to be dutiable as toys under paragraph 418, tariff act of 1897. Protest overruled.

No. 15349.—Lace Neckwear.—Protests 2050 *h*, etc., of Kisch Manufacturing Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 5866 (T. D. 25844), relating to lace neckwear.

No. 15350.—Figured Cotton Cloth.—Protests 251203, etc., of Neuburger & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15351.—Flax Noils.—Protests 178854, etc., of James Pirnie against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 15352.—Flax Noils.—Protests 39873 *b*, etc., of H. R. Shultz & Co. *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15351 (*supra*).

No. 15353.—Embroideries.—Protests 207395, etc., and protest 242185 of R. H. Macy & Co., and protest 242277 of Andrew R. Steven against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 3, 1907. Opinions by De Vries, G. A.

The goods were held to have been properly classified under the provision for embroideries in paragraph 339, tariff act of 1897.

No. 15354.—Dutiable Weight of Tobacco.—Protests 222313, etc., of D. M. Carasso *et al.* May 3, 1907.

Same as No. 15311 (*supra*).

No. 15355.—Protest Abandoned.—Protest 221041 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. May 3, 1907.

Same as No. 15314 (*supra*).

No. 15356.—Protests Unsupported.—Protest 243499 of M. J. Corbett & Co., protest 242769 of Dearbergh Brothers, protests 243356, etc., of L. E. Goetz & Co. *et al.*, and protests 242180, etc., of I. A. Lahey & Sons against the assessment of duty by the collector of customs at the port of New York Before Board 2, May 3, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

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No. 15357.—PROTESTS UNSUPPORTED.—Protests 225626, etc., of Henry Glass & Co. and protests 227759 of Remy, Schmidt & Pleissner. Opinions by De Vries, G. A.

Same as No. 15356 (*supra*).

No. 15358.—PROTESTS UNSUPPORTED.—Protests 242226, etc., of J. & H. Rosenberg and protests 242460, etc., of Smith & Kaufmann *et al.* Opinions by Fischer, G. A.

Same as No. 15356 (*supra*).

No. 15359.—PROTESTS UNSUPPORTED.—Protests 243373, etc., of Victor Koechl & Co. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15356 (*supra*).

No. 15360.—PROTEST UNSUPPORTED.—Protest 237015 of Alfred Anderson & Co. against the assessment of duty by the collector of customs at the port of Minneapolis. Before Board 3. Opinion by Hay, G. A.

Same as No. 15356 (*supra*).

No. 15361.—WOOD FLOUR.—Protest 218427 of Giant Powder Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1, May 6, 1907. Opinion by McClelland, G. A.

Protest overruled on the authority of G. A. 6325 (T. D. 27242), relating to wood flour.

No. 15362.—LAMB GLOVES.—Protest 242095-24194 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 6, 1907. Opinion by McClelland, G. A.

Gloves classified as of kid origin were claimed to be in fact lamb gloves. Protest sustained.

No. 15363.—ELASTIC BELTINGS.—Protests 210457, etc., of B. Blumenthal & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 6, 1907. Opinion by Fischer, G. A.

The goods consisted of elastic beltings, and were held to have been properly classified under paragraph 389, tariff act of 1897.

No. 15364.—METAL CANDLESTICKS.—Protest 212166 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, May 6, 1907. Opinion by Fischer, G. A.

Merchandise classified as decorated china under paragraph 95, tariff act of 1897, was claimed to be dutiable under paragraph 193 as manufactures of metal. This contention was sustained as to one item.

No. 15365.—SEWING KITS—TOYS.—Protests 228531-23751, etc., of Butler Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 6, 1907. Opinion by Fischer, G. A.

The protests related to so-called excelsior sewing kits, each comprising two spools of thread, a thimble, and some needles, the whole inclosed in a metal case. The importers objected to their classification under paragraph 193, tariff act of 1897, as manufactures of metal, contending that they should have been classified under paragraph 418 as toys. Protests overruled, it appearing that these kits are articles of utility, apparently designed for the convenience of travelers, and not used as toys.

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No. 15366.—FIGURED COTTON CLOTH.—Protests 251111, etc., of H. B. Claflin Company and protest 251567 of Hoffman, Huber & Co. May 6, 1907.

Same as No. 15350 (*supra*).

No. 15367.—FLAX FABRICS.—Protest 242074-24213 of M. Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 6, 1907. Opinion by De Vries, G. A.

Goods classified as composed in chief value of cotton were held dutiable under paragraph 346, tariff act of 1897, as fabrics in chief value of flax and weighing less than 4½ ounces per square yard.

No. 15368.—PARAFFIN CANDLES.—Protest 227575 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 3, May 6, 1907.

Paraffin candles classified as manufactures of wax under paragraph 448, tariff act of 1897, were claimed to be dutiable under section 6 as unenumerated manufactured articles. Protest sustained.

SOMERVILLE, *General Appraiser:* * * * Paraffin is placed on the free list of the present tariff act, paragraph 633; manufactures of paraffin are nowhere specifically provided for in said act. The testimony shows that the goods in question are manufactures of an article placed on the free list.

No. 15369.—PROTESTS ABANDONED.—Protests 198454, etc., of Parodi Erminio & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 6, 1907.

Protests abandoned; overruled.

No. 15370.—PROTEST ABANDONED.—Protest 243612 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15369 (*supra*).

No. 15371.—PROTEST ABANDONED.—Protest 243841 of Githens, Rexsamer & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15369 (*supra*).

No. 15372.—PROTESTS ABANDONED.—Protests 156778, etc., of Hermann Boker & Co. *et al.* Before Board 2. Opinion by Fischer, G. A.

Same as No. 15369 (*supra*).

No. 15373.—PROTESTS UNSUPPORTED.—Protest 242499 of Ralph Pierson & Co. and protest 234791 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 6, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 15374.—PROTEST UNSUPPORTED.—Protest 230749-24059 of A. C. McClurg & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15373 (*supra*).

No. 15375.—PROTESTS UNSUPPORTED.—Protests 208731, etc., of Samstag & Hilder Brothers *et al.* and protests 224135, etc., of Benj. Stearns & Co. *et al.* against the assessment of duty by the collector of customs at the ort of New York. Opinions by Howell, G. A.

Same as No. 15373 (*supra*).

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TREASURY DEPARTMENT, *May 8, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

(T. D. 28142.)

Powder puffs.

UNITED STATES *v.* BORGFELDT.

U. S. Circuit Court, District of Maryland. April 22, 1907. No. 84 (suit 1547).

WOOLEN POWDER PUFFS—BRUSHES.

So-called powder puffs, which consist of flat circular pieces of a woolen fabric having a fuzzy surface, and are used in applying toilet powder, and which therefore resemble brushes in use but not in construction. *Held* not to be dutiable as "brushes" under paragraph 410, tariff act of 1897, but as manufactures of wool under paragraph 366.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which was rendered February 24, 1903, reversed the assessment of duty by the collector of customs at the port of Baltimore, on importations by Geo. Borgfeldt & Co.

The opinion filed by the Board reads as follows:

FISCHER, *General Appraiser:* The report of the local appraiser states that the goods covered by these protests consist of "certain articles invoiced as powder puffs, which proved to be pieces of white woolen fabric, circular in form, about one-half inch thick and useful to apply powder to the face and neck." Duty was assessed on the articles at the rate of 44 cents per pound and 55 per cent ad valorem under paragraph 366 of the act of July 24, 1897, as manufactures of wool. The importers claim that they are dutiable as brushes at the rate of 40 per cent ad valorem under paragraph 410 of said act.

In an unpublished decision dated August 5, 1902 (51107*b*-1391), on a protest filed by these importers, the Board held in accordance with G. A. 1731 (T. D. 13351) that precisely similar articles to those here in question were dutiable as brushes.

Following the decisions referred to, we sustain the protests and reverse the decision of the collector.

John C. Rose, United States attorney, for the United States.

Robert G. Keegan, on the brief, for the importers.

MORRIS, *District Judge:* The merchandise consists of certain articles invoiced as powder puffs. They are simply flat circular pieces of white woolen fabric, about one-half an inch thick and about 3 inches in diameter, useful for applying toilet powder to the face and neck. The duty was assessed by the collector at Baltimore upon the articles as a manufacture of wool at the rate of 44 cents per pound and 55 per cent ad valorem under paragraph 366 of the act of July 24, 1897. The importer contends that the articles were brushes, and under Schedule N, paragraph 410 of act of July 24, 1897, liable only to 40 per cent ad valorem. Paragraph 410 reads:

410. Brushes, brooms and feather dusters of all kinds, and hair pencils in quills or otherwise, forty per centum ad valorem.

It probably would not have occurred to anyone to contend that these flat circular pieces of woolen fabric, precisely alike on both sides, are brushes, except that in previous cases certain powder puffs were held to be properly classified as brushes; and as these imported articles are used as powder puffs, it is contended that they also should be so classified. The powder puffs originally held to be brushes had handles and were made by sewing a bunch of swansdown on to a circular piece of silk or cotton cloth

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and affixing to that a small handle. That article had a handle, had a body to support the brush part, and had the swansdown to answer the place of the bristles or hair or fibers of other kinds commonly used in brushes, and they were used to apply powder to the face or to rub it off. It is obvious that these powder puffs were like "brushes" in construction and use. The articles now in question have none of these points of similitude to brushes, except their use. They are called powder puffs and are useful in applying toilet powder to the skin. But so would be a towel, a handkerchief, a napkin, or a wash cloth or any piece of woolen or cotton fabric, or a wad of cotton or wool. It seems to be a full description of the article now in question to say that it is a piece of woolen fabric which can be conveniently used for applying a toilet powder, and that is all the similitude it has to "brushes." The authority for the assimilation of powder puffs to "brushes" appears first in the letter of the Assistant Secretary of the Treasury, French, to the collector at New York, dated November 28, 1876 (Synopsis of Decisions, Treasury Department, 1876, T. D. 3028, p. 362). In that case the imported articles were composed of swansdown, cotton, and metal, and were used for applying toilet powder to the face. The contention of the importer was that they were liable only to a duty of 35 per cent ad valorem as manufactures of cotton and metal, while the contention of the collector was that they were dutiable at 40 per cent under the provision placing that duty on "brushes of all kinds." The Assistant Secretary, while sustaining the ruling of the collector, wrote:

In case, however, of an importation of so-called puffs composed in part of materials other than those above mentioned, bearing a higher rate of duty, it would be proper, in order to give due effect to the law, to base the assimilation upon the materials of which the article is composed, rather than upon the use to which it is applied. You are therefore instructed, upon any such importations, to consider whether and to what extent this principle should govern the classification thereof, and if necessary apply to the Department for specific instructions in the premises.

Another case that came up for a ruling was in 1877 (T. D. 3114, p. 50). This was an appeal by the importer from an assessed duty of 60 per cent ad valorem on certain powder puffs instead of 40 per cent. The same Assistant Secretary wrote:

It appears from the special report of the appraiser that the powder puffs in question are similar to those which were the subject of the Department's decision of November 28, 1876 (T. D. 3028), with the exception that they possess as a component material a small piece of scrap silk, which, however, does not give character to the goods nor is of sufficient important a value to be considered in classifying them for duty. In view of these facts, the Department decides that the appeal is well taken and that the powder puffs are dutiable at the rate of 40 per cent ad valorem as brushes, under the decision above referred to.

Subsequently the same ruling was applied to an instrument made of brass wire used for cleaning gun barrels, which was held dutiable as a brush and not as a manufacture of metal, and in other cases to feather dusters, a hair swab for applying remedies to the throat, bundles of fiber bound together by thin wooden strips, gloves made of hair used for rubbing the skin, an instrument for dampening the leaves of letter copy books, composed of a handle and pieces of rubber instead of hair; all these have been held to be dutiable as "brushes." In many of these cases there has been expressed doubt. In 1892 with regard to powder puffs manufactured of down, the Board of General Appraisers said:

The Board feels constrained to sustain the protest by reason of the long-established practice of the Treasury Department with regard to the classification of powder puffs.

And they further said, speaking of powder puffs composed of down and other materials:

We do not feel justified in reversing the long-established practice of the Department with regard to these goods, although we doubt the correctness of those decisions and might have reached a different conclusion if we were unembarrassed by them. G. A. 1731 (T. D. 13351).

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The powder puffs, which were composed of a little bit of down sewed to a cotton cloth made into a puff shape by being stuffed with a little excelsior and covered with a small bit of satin, were quite a manufactured article, each component part separately having hardly an appreciable value, the whole as put together being pretty and of value for the purpose for which it was manufactured. The articles now under consideration are simplicity itself, being nothing more than two disks of a woolen fabric having one fuzzy and one plain surface and sewed together with the plain surfaces back to back so as to present the fuzzy surfaces on both the outsides of the disk. Of this article the appraisers at the port of entry certified that although invoiced as powder puffs the article was in no sense a brush, but being composed of wool was dutiable under paragraph 366; and the collector certified that they were an entirely different article from that held in T. D. 3028 to be brushes. The Board of General Appraisers, in conformity to a previous decision, held that these articles, being powder puffs, were dutiable as brushes.

I am fully impressed with the justice and propriety in customs cases of adhering to an established practice of classification upon which importers have relied. But this case appears to be one in which a classification based in the first instance upon similarity of use has been step by step extended until it is held to include the present importation, which, although in construction and material altogether different from the powder puffs which were held to be brushes, is held to be a brush, although it does not resemble either a powder puff or a brush, solely because it is useful for applying a toilet powder and is invoiced as a powder puff by an importer of brushes. It seems to be too wide a departure from the meaning of the words "brushes of all kinds," to hold that Congress contemplated that these disks of woolen fabric might be classified as brushes.

I think the decision of the Board of General Appraisers should be reversed and the decision of the collector at Baltimore should be sustained.

(T. D. 28143.)

Braids of straw and cotton.

UNITED STATES *v.* RHEIMS.

U. S. Circuit Court, Southern District of New York. May 4, 1894. Suit 1227.

BRAIDS OF STRAW AND COTTON—"COMPOSED OF STRAW."

The provision in paragraph 518, tariff act of 1890, for "braids * * * composed of straw," *Held* to include braids of straw and cotton, the straw constituting over 71 per cent in quantity and about three-fourths in value of the goods.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which was rendered December 21, 1892, and was unpublished, reversed the assessment of duty by the collector of customs at the port of New York on an importation by L. Rheims. The case turned on the construction of paragraph 518, tariff act of 1890, the pertinent part of which is as follows:

518. Braids, plaits, laces, and similar manufactures composed of straw, * * * suitable for making or ornamenting hats, bonnets, and hoods.

Following is the opinion of the Board:

HAM, *General Appraiser:* The merchandise here consists of straw braids assessed for duty at 40 per cent ad valorem under paragraph 374 of the new tariff act, but claimed to be free as hat braids under paragraph 518 of said act. The unconstitutionality of the act of October 1, 1890, is also set up, but is overruled under G. A. 208 (T. D. 10553) and G. A. 286 (T. D. 10733).

The case was heard July 28 and 29, 1892, and submitted on a verified sample of the merchandise. The testimony shows that said sample covers only one item in case 4574.

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An analysis of the sample shows that it is composed of straw in quantity 71.18 per cent and cotton 28.82 per cent, and that the straw constitutes about three-fourths and the cotton about one-fourth of the value thereof.

We find as facts:

1. That the importation was made under the new tariff act.
2. That the analysis as reported is true.
3. That the merchandise is a braid of straw, suitable for making or ornamenting hats.

Manufactures of cotton are expressly exempted from the operation of said paragraph 374. It would seem, therefore, that the action of the collector in classifying the merchandise under that paragraph was without warrant of law. This view of the case constrains us to hold that the protest is tenable. It is accordingly sustained. The decision of the collector is reversed and the entry will be liquidated accordingly.

Thomas Greenwood, assistant United States attorney, for the United States.

Curie, Smith & Mackie (*W. Wickham Smith* of counsel), for the importer.

WHEELER, *District Judge:* The straw braid in question is composed principally, although not wholly, of straw, and in small part of cotton, and is suitable for ornamenting hats. It therefore seems to come within the description of a braid composed of straw suitable for that purpose. Judgment of the Board of General Appraisers affirmed.

NOTE.—On appeal by the United States, this decision was affirmed by the circuit court of appeals, second circuit (89 Fed. Rep., 1020), and the Government acquiesced (T. D. 15625).

(T. D. 28144.)

Reeds.

FOPPES *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 11, 1894. Suit 1098.

REEDS WROUGHT—"IN THE ROUGH."

Reeds of rattan, from which the outside, used for seating chairs, has been removed, are not free of duty under paragraph 756, tariff act of 1890, as reeds "in the rough." etc., but dutiable under paragraph 229 as "reeds wrought or manufactured from rattans."

ON application for review of decisions of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decisions below were rendered August 5, 1892 (unpublished), and August 26, 1892, G. A. 1702 (T. D. 13322), and affirmed the assessment of duty by the collector of customs at the port of New York on importations by Foppes & Partisch. The later decision related only to malacca whipstocks, and as to them the appeal was waived. The goods covered by the decision of August 5, to which the appeal became limited by reason of the waiver, were assessed under paragraph 229, tariff act of 1890, reading:

229. Chair cane, or reeds wrought or manufactured from rattans or reeds, and whether round, square, or in any other shape, ten per centum ad valorem.

The importers contended that they were free of duty under paragraph 756, relating to—

Reeds * * * in the rough, or not further manufactured than cut into lengths suitable for sticks for * * * whips.

The opinion of the Board in the unpublished decision reads as follows:

WILKINSON, *General Appraiser:* We find that the goods are reeds made from rattans or reeds. The claim that the merchandise is exempt from duty under paragraph 756 as reeds in the rough is overruled, and the decision of the collector is hereby affirmed. Reference is made to our decision on protest 27047 *a*, G. A. 1665 (T. D. 13244).

Stanley, Clarke & Smith (*Stephen G. Clarke* of counsel), for the importers.

James T. Van Rensselaer, assistant United States attorney, for the United States.

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WHEELER, *District Judge:* These are reeds of rattan, from which the outside that is used for seating chairs has been removed, not further manufactured than cut into lengths suitable for whips. Chair cane, or reeds manufactured from rattans or reeds, are dutiable at 10 per cent; while reeds with other woods, in the rough and not further manufactured than cut into lengths, are free. These reeds are not exactly in the rough; and the reeds associated with chair cane do not seem to be confined to chair reeds. These seem to be reeds wrought from rattans, and to be dutiable at 10 per cent as assessed.

The judgment of the Board of Appraisers is affirmed.

NOTE.—On appeal by the importers to the circuit court of appeals second circuit, the foregoing decision was affirmed without opinion (79 Fed. Rep., 995). See *In re* Knauth, G. A. 4780 (T. D. 22533).

(T. D. 28145.)

Scammony resin.

UNITED STATES *v.* MARTIN.

United States Circuit Court, District of Massachusetts. April 23, 1907. No. 18 (suit 1518).

SCAMMONY RESIN—DRUG ADVANCED—MEDICINAL PREPARATION.

Scammony resin is dutiable under paragraph 20, tariff act of 1897, as a drug advanced in value and not under paragraph 67 as a medicinal preparation.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which was unpublished, was rendered December 6, 1901, and sustained the protest of Gustav Martin against the assessment of duty by the collector of customs at the port of Boston, on the authority of Board decision *In re* Parke, G. A. 5010 (T. D. 23323). Note T. D. 23444, directing the application for review.

The article in controversy consists of scammony resin, prepared from gum scammony or scammony root, which was classified under paragraph 67, tariff act of 1897, as a medicinal preparation in the preparation of which alcohol was used, and was claimed by the importer to be dutiable under paragraph 20 as a drug advanced in value or condition. The Board found that it was used principally in the compounding of medicinal preparations, but not as a medicine in its imported condition, and sustained the importer's contention.

William H. Garland, assistant United States attorney, for the United States.

Charles P. Searle (*Edward S. Hatch* with him on the brief), for the importer.

BROWN, *District Judge:* The decision of the Board of General Appraisers is affirmed.

NOTE.—The Government in T. D. 28155 acquiesced in the foregoing decision.

(T. D. 28146.)

Doubtful question of fact.

THORPE *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 9, 1892. Suit 266.

DOUBTFUL QUESTION OF FACT—PRESUMPTION IN FAVOR OF CLASSIFICATION.

Held that the classification of merchandise for the purpose of assessing duty should not be disturbed on the basis of evidence that the officer making the classification was inclined to the opinion that he had erred in finding the component material, yet, in the absence of an analysis of the goods, was not certain that he had erred.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

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For decision below see G. A. 248 (T. D. 10664), affirming the assessment of duty by the collector of customs at the port of New York on importations by J. H. Thorpe & Co.

The goods in controversy were classified as composed in chief value of wool, against the importers' contention that they were composed chiefly of silk. The Board overruled this contention on grounds stated as follows:

SOMERVILLE, *General Appraiser:* The collector's decision must stand as presumptively correct, unless this contention is sustained. No evidence is produced or offered before the Board, after fair opportunity given, to sustain the assertion made in the protests, and it is unsustained by any fact in the record.

On appeal by the importers, further evidence was taken in the circuit court.

Comstock & Brown (*Everit Brown* of counsel), for the importers.

Charles Duane Baker, assistant United States attorney, for the United States.

WHEELER, *District Judge:* In this case the question was as to whether the material of chief value was silk. That is a pretty doubtful thing. There is but one witness who testifies anything about it, and he is the man who classified it; and he does not want to say exactly, but says that he would rather see it analyzed. He is rather inclined to think that the chief material is silk, but is not sure. I do not think that a classification made by calling a man and having him rather fade out a little on his classification is very controlling. It is said that he is an adverse witness. That is true; and he hung back a little, but hanging back don't prove anything. If you had some witness the other way, and then he hung back we would not dispute that so much. But as there is but one witness, we must see how much is really proved by him. He classified it one way, and afterwards he thought it might be the other way; but still he says, "I will not say any more than that is my impression; I would rather see it analyzed." There is a way to take that right apart and have someone who knows state what it is, and how much of each material there is in it, without any question. That is not done. I think that decision should be affirmed.

NOTE.—No appeal was taken from this decision.

(T. D. 28147.)

Ex parte affidavits.

WHITE *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 4, 1896. Suit 1067.

EVIDENCE—EX PARTE AFFIDAVITS—ADMISSIBILITY.

Under the customs administrative act of 1890 there is no provision for any relaxation of the ordinary rules of evidence in taking evidence by General Appraisers; and ex parte affidavits are not admissible before a General Appraiser taking further evidence in the circuit court under section 15 of said act.

ON application for review of decisions of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decisions below, which were unpublished, were rendered July 1, 1892, and affirmed the assessment of duty by the collector of customs at the port of New York on importations by James F. White & Co. The importers' contention in each case was that certain canvas classified as composed chiefly of flax or hemp, was in fact composed chiefly of jute.

On appeal to the circuit court the importers, under the provisions of section 15, customs administrative act of 1890, secured an order for further evidence to be taken

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before a General Appraiser as referee, and offered in evidence certain ex parte affidavits. The relevant portions of said act read as follows:

SEC. 15. * * * And all the evidence taken by and before said appraisers shall be competent evidence before said circuit court; and within twenty days after the aforesaid return is made the court may * * * refer it to one of said general appraisers, as an officer of the court, to take and return to the court such further evidence as may be offered, * * * in such order and under such rules as the court may prescribe; and such further evidence with the aforesaid return shall constitute the record upon which said circuit court shall give priority to and proceed to hear and determine the questions of law and fact involved in such decision.

SEC. 16. That the general appraisers, or any of them, are hereby authorized to administer oaths, and * * * may cite to appear before them, and examine upon oath any owner, importer, agent, consignee or other person touching any matter or thing which they or either of them may deem material respecting any imported merchandise, in ascertaining the dutiable value or classification thereof.

Stanley, Clarke & Smith (*Stephen G. Clarke* of counsel), for the importers.

Henry C. Platt, assistant United States attorney, for the United States.

WHEELER, *District Judge:* The question raised by the protest and appeal in this case is whether the component material of chief value in this importation is flax or hemp under 371, or jute under 374, of the tariff act of 1890. If ex parte affidavits of the manufacturers not used before the appraisers might be considered here, it might be found to be jute; otherwise not. While section 11 of the customs administrative act of 1890 requires appraisers to "use all available means to ascertain" the dutiable value, section 15 prescribes that the evidence taken by the appraisers and their finding, with such "further evidence" as may be taken by referee under the direction of the circuit court, shall constitute the record on appeal to that court. There is no provision for any relaxation of the ordinary rules of evidence in taking proofs, for use in court or anywhere, by the appraisers. Judgment affirmed.

NOTE.—No appeal was taken from this decision. For further authorities on this question see Mendelson *v.* United States (T. D. 27898), in which the circuit court of appeals, second circuit, held that an ex parte affidavit made by a person in a foreign country was evidence within the meaning of section 15 of the customs administrative act of 1890; also United States *v.* Downing (146 Fed. Rep., 56, 60; T. D. 27025), in which the same court gave controlling weight to a sworn statement by the manufacturer or shipper, which accompanied the goods. By reference to the printed records in these cases it appears that at the hearings before the Board of General Appraisers there was no objection to the introduction of the affidavit in the Mendelson case, but that in the Downing case the Board admitted the shippers' statement over the objection of counsel for the Government. Note, also, United States *v.* Hempstead (T. D. 28076), in which the circuit court for the eastern district of Pennsylvania held that a report by a Government officer was incompetent, because ex parte, not under oath and not subject to cross-examination. In this case the report was procured and admitted by the Board on its own motion without notice to counsel on either side.

(T. D. 28148.)

Drawback on combined projecting moving-picture and stereopticon machines.

Drawback on combined moving-picture and stereopticon machines manufactured by the Selig Polyscope Company, of Chicago, Ill., with the use of imported mounted lenses.

TREASURY DEPARTMENT, *May 7, 1907.*

SIR: On the exportation of combined projecting moving-picture and stereopticon machines manufactured by the Selig Polyscope Company, of Chicago, Ill., with the use of imported mounted lenses, a

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drawback will be allowed equal in amount to the duty paid on the lenses so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the contents of each package separately and in the aggregate.

The drawback entry must show the total number of projecting moving-picture and stereopticon machines exported, and the number, kinds, and sizes of imported mounted lenses contained therein, describing the same as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 15, 1907, transmitted herewith for filing in your office.

In liquidation, the imported mounted lenses of various kinds and sizes which may be taken as the bases for the allowance of drawback may equal the number of each consumed as declared in the drawback entry, provided it shall not exceed two mounted lenses for each complete machine.

Respectfully, JAMES B. REYNOLDS,
(45711.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

(T. D. 28149.)

Drawback on self-playing pianos.

Drawback on the exportation of imported pianos fitted with Cecilian piano players by the Farrand Organ Company, of Detroit, Mich.—T. D. 27470 of July 7, 1906, extended.

TREASURY DEPARTMENT, *May 8, 1907.*

SIR: The Department's regulations of July 7, 1906 (T. D. 27470), providing for the allowance of drawback on the exportation of pianos fitted with playing attachments manufactured by the Simplex Piano Player Company, of Worcester, Mass., with the use of imported pianos, are hereby extended, so far as applicable, to cover the exportation of pianos imported by the Farrand Organ Company, of Detroit, Mich., and fitted with their Cecilian piano player.

Respectfully, JAMES B. REYNOLDS,
(36964.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Detroit, Mich.*

(T. D. 28150.)

Drawback on locomotives.

T. D. 24418 of May 7, 1903, extended to cover locomotives manufactured by Burnham, Williams & Co. (Baldwin Locomotive Works), containing certain parts made wholly from imported bar iron.

TREASURY DEPARTMENT, *May 9, 1907.*

SIR: The Department's regulations of May 7, 1903 (T. D. 24418), providing for the allowance of drawback on locomotives made by

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Burnham, Williams & Co. (Baldwin Locomotive Works), of Philadelphia, Pa., with the use of imported steel blooms, are hereby extended to cover the following parts in addition to those specified in T. D. 26696 of September 7, 1905, which parts are manufactured wholly from imported bar iron:

Tender brake rods, brake rod, brake shaft, brake beam, cotter pin, brake rod crosshead, tender front buffer, tender brake beam hanger, tender brake shaft collar, steam brake lever, vacuum brake shaft, spring band, tender brake beam, tank lifting hook, brake hanger, brake rod coupling nut, brake connecting link, brake hanger support, tender brake lever, brake hanger, tender brake lever guide, steam brake piston rod, and brake rod coupling nut.

Respectfully, JAMES B. REYNOLDS,
(4083.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28151.)

Additional list of customs notaries.

[Omitted from this edition.]

(T. D. 28152.)

Drawback on cigarettes.

Drawback on cigarettes manufactured by A. N. Barson & Co., of New York City, wholly with the use of imported Turkish tobacco.—T. D. 23839 of July 3, 1902, extended.

TREASURY DEPARTMENT, *May 14, 1907.*

SIR: The Department's regulations of July 3, 1902 (T. D. 23839), establishing a rate for the allowance of drawback on the exportation of cigarettes manufactured by the American Tobacco Company, of New York City, are hereby extended, so far as applicable, to cover the exportation of cigarettes manufactured by A. N. Barson & Co., of New York City, wholly with the use of imported Turkish tobacco, in accordance with their sworn statement, dated May 4, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported tobacco which may be taken as a basis for the allowance of drawback shall not exceed 48 ounces for each 1,000 cigarettes of the several brands.

Respectfully, JAMES B. REYNOLDS,
(2088.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28153.)

Drawback on Wright's health underwear.

Drawback on knit underwear and piece goods manufactured by the Wright's Health Underwear Company, of Troy, N. Y., with the use of imported cotton yarns.—T. D. 26323 of April 27, 1905, extended.

TREASURY DEPARTMENT, *May 14, 1907.*

SIR: The Department's regulations of April 27, 1905 (T. D. 26323), providing for the allowance of drawback on knit underwear manu-

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factured by the Wright's Health Underwear Company, of Troy, N. Y., with the use of imported wool thread waste, are hereby extended, so far as applicable, to cover knit underwear and piece goods manufactured by this company with the use of imported cotton yarns, in accordance with the manufacturers' sworn statement, dated April 29, 1907, transmitted herewith for filing in your office.

The manufacturers shall file a sworn schedule showing the styles and weights of the different sizes of garments and also the weight per square yard of the piece goods, together with the percentages of imported wool thread or cotton yarn contained in each article.

Sworn schedules may be filed showing additional styles or sizes not specified in existing schedules in the same form as above provided, and drawback may be allowed after official verification thereof.

Respectfully, JAMES B. REYNOLDS,
(27055.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28154.)

Drawback on fire hose.

Drawback on linen fire hose manufactured by William and Charles Beck, of Lawrence, Mass., with the use of imported linen yarn.—T. D. 25029 of February 20, 1904, extended.

TREASURY DEPARTMENT, *May 14, 1907.*

SIR: The Department's regulations of February 20, 1904 (T. D. 25029), establishing a rate for the allowance of drawback on the exportation of linen fire hose manufactured by Charles Niedner, of Malden, Mass., wholly from imported yarns in the single thread, are hereby extended, so far as applicable, to cover the exportation of similar articles manufactured by William and Charles Beck, of Lawrence, Mass., from imported linen yarn, in accordance with their sworn statement, dated May 6, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(12198.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28155.)

Scammony resin.

Decision in United States *v.* Gustav Martin (T. D. 28145), acquiesced in.

TREASURY DEPARTMENT, *May 14, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the district of Massachusetts, in which he states that the case of United States *v.* Gustav Martin (suit 18) was recently decided in the United States circuit court for that district adversely to the Government.

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The merchandise in suit consisted of certain scammony resin (T. D. 23444), which had been assessed for duty at the rate of 55 cents per pound under paragraph 67 of the act of July 24, 1897, as an alcoholic medicinal preparation. The importer protested, claiming the merchandise to be a drug advanced in value by refining, grinding, or other process, and dutiable at the rate of one-fourth of 1 cent per pound and 10 per cent ad valorem under paragraph 20 of the same act, which claim was sustained by the United States circuit court in this case.

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(46492.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28156—G. A. 6585.)

Storage charges—Immediate-transportation entry.

1. EXPENSE OF ADMINISTERING PUBLIC LAW.

The burden of administering every law shall be borne by the Government unless otherwise expressly provided.

2. IMMEDIATE-TRANSPORTATION ENTRY—COPY OF QUADRUPLICATE INVOICE.

The importer is furnished two of the quadruplicate invoices provided for by section 4 of the act of June 10, 1880, one of which the law requires him to use in making entry at the port of arrival of the merchandise and the other in making entry at the port of destination. He is not required to furnish to the collector at the port of arrival a copy of this quadruplicate invoice to be used in making the permanent record which the collector is required to keep under section 2 of the act of June 10, 1880. A charge, therefore, for storage incurred by reason of the failure of the importer to furnish such a copy is not a legal charge against the importer.

United States General Appraisers, New York, May 6, 1907.

In the matter of protest 232279 of Hawley & Letzerich against the assessment of duty by the collector of customs at the port of Galveston.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* In this case the collector refused to accept an immediate-transportation entry because it was not accompanied by duplicate invoices. The merchandise went to the public store and storage was charged on the same. The protestants contend that it is nowhere provided that two copies of a consular invoice must accompany each immediate-transportation entry of merchandise liable to ad valorem or compound rates, and object to the payment of the storage charges.

If the failure of the importer to furnish a copy of the invoice rendered it necessary to remove the goods to a storehouse, there is no doubt of the validity of the charge, provided the importer is required by law to furnish such copy.

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Section 2 of the act of June 10, 1880, provides that the collector at the port of original entry where goods are entered for immediate transportation shall retain in his office a permanent record of such merchandise and that such record shall consist of a copy of the invoice and an entry whereon the duties shall be estimated as closely as possible. Section 4 of the same act provides that the consular invoice shall be executed in quadruplicate, each to be duly certified by the consul, who shall deliver to the person producing the invoice two of the quadruplicates, one of these to be used in making entry at the port of arrival of the merchandise and one to be used in making entry at the port of destination; a third shall be filed by the consul in his own office, and the fourth transmitted to the collector at the port of final destination of the merchandise. Two of the quadruplicates, it would therefore seem, are to be delivered to the importer to be used by him, one in making the entry at the port of first arrival and the other in making the entry at the port of ultimate destination. Under section 2, the collector at the port of first arrival is required to keep a permanent record which shall, among other things, contain a copy of the quadruplicate invoice, but it is nowhere provided that this copy shall be furnished by the importer. It is a principle of universal application that the burden of administering every law shall be borne by the Government unless otherwise expressly provided. Acker, Merrall & Condit's case, G. A. 5689 (T. D. 25331).

There being no provision of law requiring the importer to furnish to the collector a copy of the invoice to be used in making his permanent record, there is no obligation resting upon him to do so; and if it was therefore necessary to remove the goods to a warehouse pending the making of a copy of the invoice, the collector must do it at Government expense. In the case at bar the importer seems to have done all that the law requires of him.

The protest is sustained and the collector directed to make reliquidation accordingly.

(T. D. 28157—G. A. 6586.)

Hand-painted paper hangings.

Paragraph 402, tariff act of 1897, provides for paper hangings without words of restriction, and rolls of paper on which views of scenery have been painted by hand, shown by the importers' own testimony to be wall paper in every sense of the term, are dutiable thereunder.—G. A. 1968 (T. D. 13774) distinguished.

United States General Appraisers, New York, May 8, 1907.

In the matter of protests 227056, etc., of F. J. Emmerich Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise was returned by the appraising officer as "paper hangings," and duty was assessed thereon at the rate of 25 per cent ad valorem under the specific provision therefor in paragraph 402, tariff act of 1897. The goods are

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claimed to be dutiable properly at 20 per cent under paragraph 454 as hand paintings.

The articles are rolls of paper on which views of foreign scenery are painted by hand. In use they are pasted on the walls of rooms or stores, either completely covering or for making panels on said walls in the same manner as wall paper. They have a selvage just as wall paper has, they are applied to the wall in the same manner as wall paper, and the testimony of both of the importers' witnesses shows conclusively that the articles are paper hangings both commercially and in the ordinary sense. The goods are imported by a house that deals in nothing else but wall paper. The rolls are about 9½ feet long, 37 inches wide, and cost, landed, about 85 cents per roll.

We think this testimony confirms the correctness of the collector's classification as paper hangings. Paragraph 402 contains no restriction as to the manner in which such hangings may be produced. It covers all paper hangings without qualification, and these articles fall precisely within that designation. Cases in point are G. A. 5976 (T. D. 26185), wherein an article composed of cotton and gilt paper was held to be dutiable as paper hangings, because it was chiefly if not exclusively used as wall paper, and G. A. 6202 (T. D. 26850), wherein so-called grass cloth with a paper backing, grass cloth chief value, was held, nevertheless, to be dutiable as paper hangings, on the ground that "it is uniformly and generally classed throughout the country as within that class of goods known as paper hangings."

The testimony herein warrants a finding that the goods are dutiable as paper hangings and are dutiable under the specific provision in paragraph 402. Even if the goods are included within the terms of paragraph 454, as well, as hand paintings, they would be dutiable, nevertheless, as paper hangings for the reason that the provision therefor is without words of limitation, while paragraph 454 contains the limiting phrase "not specially provided for."

In G. A. 1968 (T. D. 13774) merchandise seemingly of the same description as this was held to be dutiable under the provisions of paragraph 465, act of October 1, 1890, as paintings, and not at 25 per cent as paper hangings, but a reference to the record in that case shows that there was no evidence beyond an identification of the samples offered, whereas in the case at bar the importers' own evidence shows conclusively that the articles are paper hangings, commonly and commercially known as such and having no other use. As there was no evidence before the Board in the former ruling (G. A. 1968), while that in the case at bar, as already stated, indicates that the articles are paper hangings, we hold that they are dutiable as assessed, under the specific provision in paragraph 402.

The protests are overruled and the decision of the collector affirmed in each case.

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(T. D. 28158—G. A. 6587.)

Gelatin printing not lithographic—Post cards.

Cards printed by the so-called "lichtdruck" process, in which the impression is made from an inked gelatin plate on which a sun print from a photographic negative was produced by the usual manner of exposure to the sunlight, are in no sense produced by lithographic process, and are not dutiable as lithographic prints under paragraph 400, tariff act of 1897. They fall within the terms of paragraph 403 as printed matter not specially provided for.

United States General Appraisers, New York, May 13, 1907.

In the matter of protests 223693, etc., of Hensel, Bruckmann & Lorbacher *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of pictorial post cards printed by the so-called gelatin process. Duty was assessed thereon at the rate of 25 per cent ad valorem under the provisions of paragraph 403, tariff act of 1897, as printed matter not specially provided for. The claim in the protests is in the following words:

Said merchandise is not dutiable as assessed. It is otherwise more aptly and specifically provided for. It is covered by, and is dutiable under, paragraph 400 at the rate or rates therein provided according to thickness, cutting size, etc.

Paragraph 400, upon which appellants rely, is very long. It provided for many different classes of goods and prescribes no less than eleven different rates of duty as applicable thereto. Yet the protests do not mention which of these many rates of duty is claimed, nor do they give any description whatever of the merchandise. In other words, they fail utterly to show that the objection taken at the trial was in the mind of the importers when the protest was filed, and they are likewise wholly insufficient to notify the collector of the true nature and character of the objection the importers might have entertained, so as to enable him to rectify any error that may have occurred in the classification of the goods. Such protests as these were overruled as insufficient in G. A. 6549 (T. D. 27943), and in accordance with this ruling we hold that the protests now before us do not comply with the requirements of section 14, act of June 10, 1890. As, however, the importers have requested a decision on the merits of the question sought to be raised by the protests, we shall take into consideration the evidence they have furnished in formulating our decision.

At the hearings three witnesses, one for the importers and two for the Government, were produced, and much testimony was taken. It appears therefrom that the cards in question were produced in the following manner: A glass plate is coated with a gelatin emulsion, and on this plate a sun print from a glass photographic negative is made in the ordinary manner. The effect of the exposure to the sun is to harden the gelatin where the passage of the light has been

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unobstructed and to leave the gelatin soft on the portions of the plate where the image on the negative has diverted the rays of sunlight. The result is that when the gelatin plate thus made is inked the harder portion shows a chemical repulsion for the ink, which, consequently, adheres to the softer portion only. The cards are printed from this plate on a flat bed press. There is no printing from a stone or other material on which the desired picture or design has been drawn or etched, as is done in lithography. To call such a process as this lithography is a gross perversion of terms. The testimony of the importers' witness not only fails to sustain the contention that it is lithographic, but it warrants an affirmative finding that the cards were not printed by lithography or lithographic process in whole or in part. The process described is technically known as "lichtdruck," and in reply to questions he answered as follows:

Q. Well, why is lichtdruck lithography?—A. It is not lithography.

Q. What is it?—A. It is a chemical process.

Q. Well, is all chemical process lithography?—A. No; you can tell lithography.

* * * * * * *

Q. Isn't it also a fact that anything that is merely produced by a solar process or by chemical action alone is not lithography?—A. In the strict sense of the word it is not lithography.

* * * * * * *

Q. But the use of the term lichtdruck as lithography you have never heard?—A. No; it would not be proper to use it. You know lichtdruck is entirely different from lithography.

On this testimony the importers rested their case, and on it as well as on the testimony given by the two witnesses for the Government, who were exceptionally well-qualified men, we find that the merchandise is in no sense lithographic prints, and that the contention that it is is absolutely without merit.

The protests are overruled on all grounds and the decision of the collector affirmed in each case.

(T. D. 28159—G. A. 6588.)

Protests insufficient—Figured cotton cloth.

Figured cotton articles of similar description to those which were held in G. A. 5790 (T. D. 25580) to be dutiable as countable cotton cloth at certain rates as provided for in paragraphs 304 to 309, tariff act of 1897, with 2 cents per square yard additional under paragraph 313, were claimed to be "dutiable as cotton cloth (by virtue of paragraph 310, Schedule I, tariff act of 1897) at the appropriate rate according to the number of threads per square inch, the value per square yard, and the number of square yards to the pound under paragraphs 304 to 309, inclusive, Schedule I, tariff act of 1897." *Held* that the protests are insufficient in that they do not set forth "distinctly and specifically" the reasons for the importers' objections to the assessment of duty made by the collector, as required by section 14, act of June 10, 1890. They do not name the rate of duty or the particular paragraph of the law under which the goods should have been classified, and they are not sufficient to notify the collector of the

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nature and character of the objection sought to be raised by the protests.—Presson *v.* Russell (152 U. S., 577), Boker *v.* United States (145 Fed. Rep., 1022; T. D. 27192), affirming 140 Federal Reporter, 115 (T. D. 26451), Rosenberg *v.* United States (146 Fed. Rep., 84; T. D. 27183), United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923), G. A. 4566 (T. D. 21640), G. A. 6360 (T. D. 27328), and the many authorities therein quoted, G. A. 6447 (T. D. 27631) and G. A. 6472 (T. D. 27684), cited and followed

United States General Appraisers, New York, May 14, 1907.

In the matter of protests 51538, etc., of Mills & Gibb *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in these cases consists of Madras curtains, table covers, and other cotton articles, upon which duty was assessed at the rate of 45 per cent ad valorem under the provisions of paragraph 322 of the tariff act of 1897 as manufactures of cotton, and at 60 per cent ad valorem under the provisions of paragraph 339 of said act as etamines and vitrages, respectively.

The claim in the protests reads as follows:

* * * Claiming said goods dutiable as cotton cloth (by virtue of paragraph 310, Schedule I, act of July 24, 1897), at the appropriate rate according to the number of threads per square inch, the value per square yard, and the number of square yards to the pound under paragraphs 304–309, inclusive, Schedule I, act of July 24, 1897, or at 45 per cent ad valorem under paragraph 322, same schedule and act.

These protests are fatally defective in two different particulars.

1. Paragraphs 304 to 309 cover every variety of cotton cloth known to commerce; they prescribe 71 different rates of duty to be assessed on cotton cloth, making the rate to be applied to the particular goods depend on the count of threads to the square inch, the value per square yard, the number of square yards to the pound, and the condition of the cloth as to whether it is bleached, stained, colored, printed, etc. To say, as these protests do, that a woven fabric is dutiable at the appropriate rate under paragraphs 304 to 309 is scarcely better than an allegation that the merchandise is dutiable under the appropriate provision of the tariff act of 1897. One purpose of a protest is to apprise the collector of the exact claim made and relied on by the importer, so that if the official concludes that an error was made in the original assessment and he finds that the importer's claim is a just one, he may allow it and amend his assessment accordingly. It can not be said that a protest that claims that the merchandise is dutiable under some portion (without naming it) of six paragraphs of the tariff which, as already said, prescribe 71 different rates of duty, does point out his error to the collector by specifying the importer's claim so that he may reliquidate the entry if he desires to do so. Such a protest offers no basis on which to reliquidate. Surely it is not a compliance with the statutory requirement that the importer, if dissatisfied with the liquidation decision made by the collector as to rate and amount of duties chargeable

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upon the goods, shall "give notice in writing to the collector setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto." * * * These protests are the reverse of specific; they are vague and indefinite, and they fail utterly to show that the importer had the reasons for his objection to the assessment of duty in mind when he made the protests.

It should not be overlooked that the particulars in which these protests are deficient concern exclusively statements of facts that are peculiarly within the knowledge of the importer—that is to say, the number of threads, etc. The goods are his property; he buys them and sells them; he knows how many threads to the square inch they contain, how many square yards there are to the pound, what their value is, and whether they are or are not colored, bleached, printed, etc. Having all these facts, it is no hardship to require him to state them, for it must be on these facts he bases his objection to the assessment of duty made by the collector.

In a recent decision, summarized in Abstract 13931 (T. D. 27801), the Board made the following remarks, and the principle enunciated is precisely applicable to the cases at bar:

This is not a mere captious criticism, nor is it a rigorous exaction of technical precision. The rates prescribed in the opening clause of paragraph 137 depend on the gauge of the wire and the gauge of the wire is a fact that is peculiarly within the knowledge of the importer. It is, then, no hardship to require him to state it in his protest, for without such information the liquidating officer would be helpless. There are before us now for decision several protests involving the rate of duty on fishhooks, which will be sustained because they point out the particular rate of duty claimed for each class of hooks, and the proof offered is sufficient, * * * the importer has made the correct claim, an indication that the rule we here enunciate does not call for the performance of an impossibility.

In the case of Fauche *v.* Schell (33 Fed. Rep., 336) the court said:

A protest made in case of merchandise not enumerated *eo nomine* in the tariff act in force at the time of its importation, and stating only that the same is claimed to be dutiable at a rate of duty which is imposed upon upward of 50 articles specially enumerated therein, is insufficient under the protest act of February 26, 1845, and no recovery can be had thereunder.

This case was affirmed on appeal by the Supreme Court. See Schell *v.* Fauche (138 U. S., 562).

The case of Boker *v.* United States (140 Fed. Rep., 115; T. D. 26451), affirmed by the circuit court of appeals in 145 Federal Reporter, 1022 (T. D. 27192), is decisive of the question of sufficiency of these protests. This was an affirmance of G. A. 5879 (T. D. 25892), which had overruled as insufficient protests that read as follows:

We claim that the said goods are properly dutiable under the provisions of paragraph 137 of the tariff act of July 24, 1897.

In his opinion Judge Townsend said:

The paragraph is a long one; the protest fails to state on what grounds the objection is made, or what rate of duty is claimed. It is therefore insufficient within the

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rule that "the importer shall set forth in his protest distinctly and specifically the reasons for his objections to the assessment." United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923).

These observations apply exactly to the claim in protests before us. Paragraphs 304 to 309 are very long; they are among the lengthiest in the tariff; they prescribe several times as many rates of duty as paragraph 137 includes. The protests do not mention what rate of duty is claimed and do not state on what grounds the objection is made. If a protest that claimed only under one paragraph be insufficient on these grounds, certainly those now before us, claiming under some one of six paragraphs without specifying under which one, and without mentioning the rate of duty, are worse.

In Rosenberg *v.* United States (146 Fed. Rep., 84; T. D. 27183), certain protests were held insufficient in which the claim was couched in the following language:

> That said merchandise is dutiable at the appropriate rate and under the proper paragraph according to the component material of chief value.

So far as the requirement of definitely and accurately pointing out to the collector the objections to his assessment of duty and the reasons therefor is concerned, the protests before us are no better than those in the Rosenberg case and the decision is precisely in point.

2. Furthermore, the protests have another defect which would alone be fatal to the attempt of the importer to secure a reliquidation even if the faults already referred to did not exist. It appears from the testimony and the samples admitted in evidence that the goods, with the exception of items 423, 3133, and 8387, are such as were held in G. A. 5790 (T. D. 25580), and other decisions, to be dutiable as countable cotton cloth, and that into them "other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," and that they are consequently subject to the duty prescribed in paragraph 313 in addition to whatever rate they are liable to as countable cotton cloth. There is no allegation or admission in the protests that the goods are figured, nor does any claim appear therein under paragraph 313. So that if the protests were unobjectionable in the particulars stated in the first part of this opinion, and the collector had amended his classification and reliquidated the entries in accordance with the terms of the protests he would not have assessed the proper rate of duty provided by law, and the Government would not have received the revenue to which it was entitled. Clearly such a protest is not a compliance with the statute. The existence or nonexistence of a figure in the goods is a fact that is within the knowledge of the importer, of course, but which was not communicated by him to the collector. In this particular the protests not only fail to show that the objections were in the mind of the importer when he filed his protest, but they are themselves some evidence that the proper objection was not in mind. The

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claim that the goods are dutiable "as cotton cloth * * * under paragraphs 304–309, inclusive," is in effect an allegation that the goods are not figured, for figured cottons are dealt with specifically in paragraph 313.

To hold these protests sufficient would be to rule that it is the duty of the collector to search all through the tariff act and practically to amend the protest by adding thereto any provision of law that might be necessary to make it perfect. But it has been repeatedly held, on the highest judicial authorities, that a collector is not required to search through the law in order to see if a protest can possibly be made to apply. In these particulars the protests are fundamentally defective, for they do not point out the correct rate of duty, or the proper provisions of law applicable to the merchandise, nor do they contain any reference direct or indirect, or a description of the goods which would enable him to fix the proper rate of duty.

The Board passed upon a precisely similar question in G. A. 6472 (T. D. 27684). There the merchandise consisted of beveled and polished steel plates, which were held to be dutiable properly under the provisions of paragraph 135, a claim which appeared in the protests, with 1 cent a pound additional under paragraph 141. As this latter claim did not appear, and no admission or allegation that the plates were polished was made in the protests, they were overruled as insufficient, the grounds stated being (1) they do not point out the paragraphs applicable; (2) they do not set forth correctly the rate of duty applicable; (3) the reasons for the objection to the decision of the collector are not distinctly and specifically set forth.

To summarize, then, the protests are deficient because, as stated in G. A. 6360 (T. D. 27328), wherein the subject of sufficiency of protest is exhaustively treated and the rulings of the courts for over a century are cited, and from which no appeal was taken by the importers, they do not measure up to the well-established rule that they must be so distinct and specific as to show that the objection taken at the trial was, at the time the protest was made, in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character; that they must point out the paragraph and the portion of the paragraph applicable to the goods where there are different rates applicable to differentiated goods provided for in the same paragraph; that they must correctly set forth the rate of duty applicable. All these requirements are here lacking.

In G. A. 6472 (*supra*), one member of the Board, dissenting from some of the reasoning of the majority, but agreeing in the conclusion reached, wrote a concurring opinion which is precisely applicable to the question raised by the protests before us. He said in part:

The protest, while claiming under paragraph 135, does not point out the particular subdivision thereof applicable to the merchandise in question, nor does it allege the

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particular rate applicable to such merchandise, nor does it assign to the importation any particular qualities that bring it within any of the provisions of said paragraph. It has been uniformly held by this Board that a protest must not alone recite the paragraph but allege the correct rate, *and where several rates are provided for in the same paragraph must count upon the precise part of the paragraph applicable.* See Smith *v.* Schell (27 Fed. Rep., 648), Schell *v.* Fauche (138 U. S., 562), and Boker *v.* United States (140 Fed. Rep., 115; T. D. 26451). In this case the protest makes no such allegation of rates or provisions of law, and for that reason is, in my judgment, fatally defective.

Another recent decision of the Board in point is G. A. 6447 (T. D. 27631), wherein the merchandise consisted of cotton cloth which was claimed to be dutiable at 40 per cent ad valorem "under the provisions of paragraphs 307, 308, and 309 of said act." In his report upon the protest the collector stated that the goods were properly dutiable at 6 cents and 4¼ cents per square yard under the same paragraphs. In the opinion the following observations appear:

It is manifest that the applicable provision of law and the appropriate rate of duty are not stated by the protestants in their protest. It is equally manifest that the protest was not sufficiently explicit or clear in its references to the merchandise or the rate cited to have directed the mind of the collector to the appropriate and applicable provision of the law. *All of these paragraphs cited provide for different rates of duty applicable to several different qualities of merchandise. The particular provisions and parts of the paragraphs applicable to the merchandise in question were not cited, nor was the applicable rate of duty claimed in the protest.*

In G. A. 4566 (T. D. 21640), a protest which claimed that the goods in question, "being composed chiefly of cotton, are dutiable at the various rates prescribed in Schedule I," was held to be insufficient, citing and following Presson *v.* Russell (152 U. S., 577).

On the authorities and for the reasons cited, we hold that these protests do not comply with the requirements of section 14 of the act of June 10, 1890 (26 U. S. Stat., 131; U. S. Com. Stat., p. 1886). They are, therefore, overruled and the decision of the collector in each case will stand.

CONCURRING OPINION.

DE VRIES, *General Appraiser:* I concur in the conclusions reached by my colleagues herein, but dissent from so much of the reasoning thereof, set forth in subdivision 2, as holds it necessary to plead any part of paragraph 313 in a protest which sets forth the rate of duty sufficient to cover merchandise dutiable under the provisions of paragraphs 304 to 309, tariff act of 1897. So much of the reasoning of the opinion of my colleagues is in effect a reversal of G. A. 5613 (T. D. 25108), decided by this Board March 14, 1904, wherein the Board held that a protest counting upon the countable provisions of the cotton schedule was sufficient, though it did not in anywise count upon paragraph 313, and the merchandise was covered by paragraph 313.

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The same opinion is adhered to in the concurring opinion in G. A. 6472 (T. D. 27684) and the authorities therein cited. Indeed, the precise point here raised is used by way of illustration in that concurring opinion.

It seems to me perfectly clear, from my limited point of view, that every provision of law which levies duties in the first instance upon cotton cloth or articles of every kind and description is contained in other provisions of the cotton schedule than paragraph 313. Paragraph 313 levies an additional duty upon cotton cloth or articles previously or otherwhere provided for in the cotton schedule.

In the case of United States *v.* Riggs (203 U. S., 136; T. D. 27721), the Supreme Court, in passing upon the relation of paragraph 313 to the other provisions of the cotton schedule, said:

> The artificial doubt is raised by assuming that the collector must start with the first part of paragraph 313 and find out what his assessments are to be from that alone. That is a mistake. He has before him the whole act. He has been told in the earlier paragraphs in unmistakable language that all cotton cloth with this number of threads and above a certain value must pay 30 or 35 per cent ad valorem. *Then comes this paragraph, which on its face purports to make an addition to some tax which it assumes to have been imposed by the earlier ones. It is intended to hit all cotton cloths and all values, and it is intended to be added to a tax already imposed.*

If it be true, as said by the Supreme Court, that paragraph 313 is applicable to all cotton cloths and articles, and is intended to be added to a tax already imposed by the provisions of the cotton schedule, the collector is certainly presumed to know whenever he has before him a piece of cotton cloth of any kind that paragraph 313 is applicable thereto just as much so as that he is bound to know of a cotton schedule; and a case is pleaded within purview of paragraph 313 whenever it appears in the protest, therefore, that the merchandise under consideration is cotton cloth. It necessarily follows that if paragraph 313 is applicable to all cotton cloths, or may be so applicable, as stated by the Supreme Court, and as plainly appears from the reading of the tariff act, the collector must be deemed conclusively to know in every instance wherein a protest recites that goods are dutiable under any provision of the cotton schedules or are cotton cloth, that paragraph 313 must also be taken into consideration, and that such a recital in a protest, in so far as paragraph 313 is concerned, amounts to an *eo nomine* designation.

Moreover, this is a conjoint provision of law which is taken in connection with other provisions of law, to wit, the countable provisions of the cotton schedule. Whenever, therefore, the collector looks, in the ascertainment of a duty, to any of the countable cotton provisions, being conclusively presumed to know the law, he must and is conclusively presumed to know that as a conjoint and ever-attendant part of each of those provisions follows paragraph 313.

There is nothing in this view inconsistent with the conclusions reached by the Board in G. A. 6360 (T. D. 27728). It is one of the

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cases that fall in subdivision 7, set forth in the opinion of the Board in that case, wherein, commenting upon the rules laid down cited in the majority opinion, the Board said:

7. *There are a few exceptional cases which seem to have been decided upon principles at variance with the above-mentioned rules, and are exceptions thereto. It will be found upon examination, we think, that all may be included within the statement that there were some particular facts in the record or circumstances attending the context of the law wherefrom the particular court deciding the case could not escape the conclusion that under the facts and the law as presented the attention of the collector must have been directed to the applicable provision of the law.*

I concur in the conclusion reached by my colleagues.

(T. D. 28160.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15376.—MAGNESIA ARTICLES.—Protests 237069, etc., of Goldschmidt Thermit Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 8, 1907. Opinion by McClelland, G. A.

Magnesia stones and thimbles were held dutiable under section 6, tariff act of 1897, as unenumerated manufactured articles, as claimed by the importers. Abstract 12943 (T. D. 27636), Abstract 13559 (T. D. 27729), and Abstract 13904 (T. D. 27801) followed.

No. 15377.—CHILDREN'S GLOVES.—Protest 242098-24164 of Wilson Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 8, 1907. Opinion by McClelland, G. A.

Goods classified as men's gloves were claimed to be in fact children's gloves. Protest sustained.

No. 15378.—STEEL POINTS.—Protests 222039, etc., of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 8, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 14968 (T. D. 28074), relating to steel points.

No. 15379.—PAPER SCROLLS—PRINTED MATTER.—Protests 230642, etc., of Morimura Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 8, 1907. Opinion by Fischer, G. A.

The protests related to paper scrolls, consisting of sheets of paper upon which scenes of Japanese life are depicted by means of wood-block illustrations, with wooden strips to protect the ends. The articles are used by being hung upon walls for decorative purposes. They were classified as manufactures of paper under paragraph 407, tariff act of 1897, and were claimed to be dutiable as printed matter under paragraph 403. This contention was sustained as to protest 230643.

No. 15380.—FISHHOOKS.—Protests 229060, etc., of L. D. Lothrop against the assessment of duty by the collector of customs at the port of Gloucester. Before Board 2, May 8, 1907. Opinion by Fischer, G. A.

The importer contended that certain fishhooks, dutiable under paragraph 137, tariff act of 1897, had been classified under inapplicable provisions of that paragraph. This contention was sustained in part.

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No. 15381.—Tissue Paper Shavings.—Protest 229728 of John A. Conkey & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, May 8, 1907.

The article in controversy, which was classified as a manufacture of paper under paragraph 407, tariff act of 1897, was claimed to be dutiable under paragraph 463 as waste, or under paragraph 402 as paper not specially provided for. Protest overruled.

Fischer, *General Appraiser:* The merchandise consists of tissue paper cut up into very narrow strips and used for packing purposes, in much the same manner as excelsior. * * * The testimony indicates that this article is manufactured from tissue paper by special machinery for a particular purpose and that it has acquired a new name, to wit, tissue shavings, and is used for a different purpose from that for which tissue paper is ordinarily employed. This finding disposes of the claim as waste, and also in our opinion justifies the classification of the article as manufacture of paper. In United States *v.* Meier (136 Fed. Rep., 764; T. D. 25973), so-called flitters, small particles cut from composition metal, were held to be dutiable as manufacture of metal, and in G. A. 6260 (T. D. 26992) this Board held that paper confetti, an article much resembling that now before us, was dutiable as manufacture of paper.

No. 15382.—Drawing Paper.—Protest 230766-23857 of Thayer & Chandler against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 8, 1907. Opinion by Fischer, G. A.

The merchandise was held to have been properly classified under paragraph 401, tariff act of 1897, as drawing paper.

No. 15383.—Silk Fabrics.—Protests 42040*f*, etc., of Bloomingdale Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 8, 1907. Opinion by Howell, G. A.

Assessment affirmed except as to a portion of the goods covered by protest 42041*f*, in respect to which the importers' contention was sustained on the authority of G. A. 4466 (T. D. 21326), relating to silk fabrics.

No. 15384.—Silk Bindings.—Protest 244524-24223 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, May 8, 1907. Opinion by Howell, G. A.

Bindings classified as composed in chief value of silk were claimed by the importers to be in chief value of cotton. Assessment affirmed.

No. 15385.—Embroidered Hosiery.—Protest 248763 of Charles H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 8, 1907. Opinion by De Vries, G. A.

Protest overruled on the authority of G. A. 6365 (T. D. 27344), relating to embroidered hosiery.

No. 15386.—Cotton Cloth.—Protest 243966 of John Taylor Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 2, May 8, 1907. Opinion by De Vries, G. A.

The goods were classified as embroideries under paragraph 339, tariff act of 1897. A portion was held dutiable under paragraphs 306 and 313 as figured cottons, as claimed by the importers. In all other respects the protest was overruled, either for want of evidence or for failure to make the proper contention.

No. 15387.—Figured Cotton Cloth.—Protests 251219, etc., of W. B. Quaintance *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 8, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

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No. 15388.—FIGURED COTTON CLOTH.—Protest 163160 of Young, Smyth & Field Company against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15387 (*supra*).

No. 15389.—FLAX NOILS.—Protests 129872, etc., of Charles H. Wood *et al.* and protests 243106, etc., of W. F. Corne against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, May 8, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 15390.—SALAMI.—Protest 221904 of A. Guirlani & Bro. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 8, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of G. A. 6371 (T. D. 27361), relating to salami.

No. 15391.—ANIMALS FOR BREEDING PURPOSES—REGULATIONS.—Protest 230124 of A. H. Leavitt against the assessment of duty by the collector of customs at the port of Eastport. Before Board 3, May 8, 1907.

An imported horse was claimed to be free of duty as an animal imported for breeding purposes under paragraph 473, tariff act of 1897, as amended by the act of March 3, 1903. Protest overruled.

WAITE, *General Appraiser:* * * * The collector evidently assessed the duty because the certificate of record and pedigree produced at the time of entry was not in proper form. Later there were filed two other certificates, at least one of which (that from the American studbook) appears to be in proper form and from an authorized register (T. D. 27476).

The Treasury regulations as embodied in T. D. 27476 provide for the giving of a bond by the importer conditioned to produce the certificate, in case it is not at hand at the time of the arrival of the animals, and, as an alternative—

> Should the importer elect, estimated duties may be paid and a written stipulation filed with the collector within ten days thereafter to produce the requisite certificates within six months from the date of entry, whereupon final liquidation will be suspended until the production of the certificate or the expiration of the six months.

Under this regulation, the importer had at his election ten days after the payment of the estimated duties within which to file his stipulation which would secure a further suspension of liquidation for six months, or until the pedigree certificate was produced. As it appears reasonably certain that the certificate from the American studbook was placed in the collector's hand within ten days after entry, we should sustain this protest were there not other defects in the proof necessary to be supplied by the importer before the restrictions of the statute are satisfied.

For one thing, it does not affirmatively appear from the record that the importer is a citizen of the United States which fact, under the act of March 3, 1903 (32 Stat., 1023), is a necessary ingredient of his case. Further, it is not shown that he has complied with the express provision of the law and regulations, which require that there shall be filed with the collector, together with the certificate of pedigree, "an affidavit of the owner, agent, or importer that such animal is the identical animal described in such certificate of record and pedigree."

No. 15392.—CANNED CURRANTS—FRUITS PREPARED.—Protest 232265 of Isaac McNiven against the assessment of duty by the collector of customs at the port of Niagara Falls. Before Board 3, May 8, 1907.

The merchandise in controversy, which was classified under paragraph 263, tariff act of 1897, as fruits preserved, was claimed to be dutiable under paragraph 262 as fruits prepared.

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WAITE, *General Appraiser:* The goods are black currants partly cooked in water, without sugar, and packed in gallon cans. * * * The decision of the Board in the case of Seggerman Brothers, G. A. 6507 (T. D. 27795), seems decisive of the questions raised. That case related to blueberries, partially cooked in water without sugar and packed in small air-tight cans, which were held to be dutiable as prepared fruits under said paragraph 262 rather than as preserved fruits under paragraph 263.

An inspection of the official sample in this case satisfies the Board that the article is not so far advanced as to have reached the condition of a preserve or comfit, and that the preparation by partial cooking and packing in hermetically sealed cans is merely a preliminary step to a more advanced preparation.

Upon the authority of the case cited above and the decision of the circuit court of appeals in Causse Manufacturing Company *v.* United States (151 Fed. Rep., 4; T. D. 27751), the protest is sustained and the collector's decision reversed.

No. 15393.—PETROLEUM PRODUCTS.—Protest 229829 of L. Sonneborn Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 8, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of G. A. 6405 (T. D. 27507), relating to petroleum products.

No. 15394.—DECORATED EARTHENWARE—CLAY MONKEYS—SMOKERS' ARTICLES.—Protests 227116-23314, etc., of American Shipping Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 8, 1907. Opinion by Hay, G. A.

The Board overruled the protests, holding clay monkeys to have been properly classified as decorated earthenware under paragraph 95, tariff act of 1897, and metal trays and purses, used respectively as ash trays and cigarette cases, to have been properly classified as smokers' articles under paragraph 459.

No. 15395.—PROTEST ABANDONED.—Protest 231673 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 8, 1907. Opinion by Howell, G. A.

Protest abandoned; overruled.

No. 15396.—PROTESTS ABANDONED.—Protests 244137, etc., of Charles H. Wyman & Co. *et al.* Before Board 3.

Same as No. 15395 (*supra*).

No. 15397.—PROTEST ABANDONED.—Protest 243067 of John J. Murphy against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 8, 1907. Opinion by Lunt, G. A.

Protest abandoned; overruled.

No. 15398.—PROTESTS UNSUPPORTED.—Protests 242283, etc., of A. A. Vantine & Co. *et al.* and protests 225214, etc., of H. Robinson against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 8, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 15399.—PROTEST UNSUPPORTED.—Protest 242880 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by Fischer, G. A.

Same as No. 15398 (*supra*).

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No. 15400.—PROTESTS UNSUPPORTED.—Protests 229620, etc., of Godillot & Co. *et al.* and protest 242208 of Reed & Keller. Before Board 1. Opinions by McClelland, G. A.

Same as No. 15398 (*supra*).

No. 15401.—PROTESTS UNSUPPORTED.—Protest 219366 of Chee Chong & Co. and protest 219378 of Kokusansha Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 8, 1907. Opinions by Waite, G. A.

Protests overruled for want of merit.

No. 15402.—PROTEST UNSUPPORTED.—Protest 229064 of G. A. Green against the assessment of duty by the collector of customs at the port of Key West.

Same as No. 15401 (*supra*).

No. 15403.—PROTEST UNSUPPORTED.—Protest 243603 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of New York. Opinion by Hay, G. A.

Same as No. 15401 (*supra*).

(T. D. 28161.)

Gauge—Liquors in bottles.

Actual gauge to be taken from time to time of liquors in bottles, a standard gauge for which has been adopted by the Department.

TREASURY DEPARTMENT, *May 15, 1907.*

SIR: The Department is in receipt of your letter of the 9th instant, reporting upon the practice at your port in returning the gauge of imported liquors in bottles, a standard or conventional gauge for which was published by the Department in T. D. 22237 of May 21, 1900.

While the conventional gauge established should ordinarily be followed, an actual gauge should be taken from time to time, to determine whether any change has been made in sizes of the bottles ordinarily containing such liquors, and whenever bottles apparently vary in size, or there is reason to believe that the same differ from the bottles generally used for such liquors, an actual gauge should be made, and if there be any material discrepancy between such actual gauge and the standard or conventional gauge established, the actual gauge should be followed.

Respectfully, JAMES B. REYNOLDS,
(45702.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Chicago, Ill.*

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(T. D. 28162.)

Drawback on golf balls.

Drawback on golf balls manufactured by the Goodyear Tire and Rubber Company, of Akron, Ohio, with the use of imported spun silk.

TREASURY DEPARTMENT, *May 16, 1907.*

SIR: On the exportation of golf balls manufactured by the Goodyear Tire and Rubber Company, of Akron, Ohio, with the use of imported spun silk, a drawback will be allowed equal in amount to the duty paid on the imported material used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the number of golf balls contained in each package and in the entire shipment.

The drawback entry must show the total number of golf balls exported and the quantity of imported spun silk used in the manufacture thereof. In addition to the usual averments, said entry must show that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated April 30, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of spun silk which may be taken as the basis for allowance of drawback may equal the quantity stated in the drawback entry after official verification of exported quantities, provided it shall not exceed 37 ounces for each 100 balls exported.

Respectfully, JAMES B. REYNOLDS,
(46499.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *Cleveland, Ohio.*

(T. D. 28163.)

Polished steel.

Decision of the United States circuit court of appeals, second circuit, United States *v.* Crucible Steel Company (T. D. 28106), acquiesced in.

TREASURY DEPARTMENT, *May 17, 1907.*

SIR: The Department is in receipt of a letter from the United States attorney for the southern district of New York, dated the 1st instant, in which he reports that suit 4150 (T. D. 28106), United States *v.* Crucible Steel Company, was recently decided by the United States circuit court of appeals, second circuit, adversely to the Government.

The merchandise in suit consisted of certain steel strips, which were assessed with duty at the appropriate rate under paragraph 135 of the tariff act, together with an additional duty of 1 cent per pound under paragraph 141 of the same act. The importers protested, claiming the steel strips not to be cold rolled and brightened

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within the meaning of paragraph 141, and not, therefore, subject to the additional duty of 1 cent per pound, which claim was sustained by the United States circuit court of appeals.

The Attorney-General advises this Department that no further proceedings will be had in this case, and you are therefore hereby authorized to forward to the Department a certified statement in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(17092.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28164.)

Singapore buffalo hides.

Department's acquiescence of the 25th ultimo (T. D. 28111) in the decision of the United States circuit court for the southern district of New York (T. D. 28008), involving the classification of Singapore buffalo hides, limited to that case.

TREASURY DEPARTMENT, *May 17, 1907.*

SIR: Referring to the decision of the United States circuit court for the southern district of New York (suit 4208; T. D. 28008) Baeder, Adamson & Co. *v.* United States, which was decided adversely to the Government, and in which decision the Department acquiesced in a letter dated the 25th ultimo (T. D. 28111), I have to advise you that the said acquiescence is to be limited to that case, and you are hereby instructed to assess duty upon the hides of so-called Singapore buffalo under paragraph 437 at the rate of 15 per cent ad valorem, in harmony with the Department's letter of December 29, 1905 (T. D. 26953).

Respectfully, JAMES B. REYNOLDS,
(11489.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28165.)

Drawback on hydraulic rams, corn shellers, hydrants, etc.

Drawback on hydraulic rams, corn shellers, hydrants, jack screws, well wheels, hand, windmill, and power pumps manufactured by Rumsey & Co. (Limited), of Seneca Falls, N. Y., with the use of imported pig iron.

TREASURY DEPARTMENT, *May 18, 1907.*

SIR: On the exportation of hydraulic rams, corn shellers, hydrants, jack screws, well wheels, hand, windmill and power pumps manufactured by Rumsey & Co. (Limited), of Seneca Falls, N. Y., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

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The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight thereof, together with the number of each article contained in each package and in the entire shipment.

The drawback entry must show the total number of each kind of the aforesaid articles exported and the percentage and quantity of imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated May 8, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported iron contained in the exported article with 5 per cent of such weight added thereto to compensate for loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(46898.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28166.)

Drawback on radiators, boilers, or heaters.

Drawback on radiators and boilers or heaters manufactured by the Hart & Crouse Company, of Utica, N. Y., with the use in part of imported pig iron.—T. D. 24839 of December 22, 1903, extended.

TREASURY DEPARTMENT, *May 18, 1907.*

SIR: The Department's regulations of December 22, 1903 (T. D. 24839), establishing a rate for the allowance of drawback on the exportation of radiators, boilers, etc., manufactured by the A. A. Griffing Iron Company, of Jersey City, N. J., with the use of imported pig iron, are hereby extended, so far as applicable, to cover the exportation of radiators and boilers or heaters manufactured by the Hart & Crouse Company, of Utica, N. Y., with the use in part of imported pig iron in accordance with their sworn statement, dated May 10, 1907, transmitted herewith for filing in your office.

The allowance for valueless waste shall not exceed 5 per cent of the net weight of the imported pig iron contained in the exported articles.

Respectfully, JAMES B. REYNOLDS,
(11009.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28167.)

Drawback on engines, machinery, etc.

Drawback on engines, machinery, forges, and kettles manufactured by the Buffalo Forge Company, or Buffalo Steam Pump Company, or the George L. Squier Manufacturing Company, of Buffalo, N. Y., with the use of imported pig iron.

TREASURY DEPARTMENT, *May 20, 1907.*

SIR: On the exportation of engines, machinery, forges, and kettles manufactured by the Buffalo Forge Company, or Buffalo Steam Pump Company, or the George L. Squier Manufacturing Company, of Buffalo, N. Y., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the gross and net weight of each package and of the entire shipment, and the number and kind of each article contained therein.

The drawback entry must show the total number of each kind of article exported and the net weight of the castings used therein and the quantity and percentage of imported pig iron consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated March 8, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantities declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the quantities of pig iron contained in the exported castings as shown in the sworn schedule, with an addition of 5 per cent of such quantities added thereto to compensate for absolute loss in the process of manufacture.

Respectfully, JAMES B. REYNOLDS,
(42776.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28168.)

Briefing of entries.

[Circular No. 32.]

TREASURY DEPARTMENT, *May 21, 1907.*

To collectors and other officers of the customs:

In view of the discontinuance of the use of Cat. No. 198 at nonnaval office ports, collectors of customs and surveyors acting as collectors at each of the nonnaval office ports are instructed to place on the brief fold of each entry for consumption or warehousing the name

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of the port from which received and the number of the immediate-transportation entry for each shipment received by them under immediate transportation without appraisement.

In case an entry is withheld by the collector, the name of the port and the immediate-transportation number should be placed on the slip, Cat. No. 157, and forwarded in place of the entry so withheld.

They will also note on the report of merchandise placed in General Order, Cat. No. 435¾, the port from which received as well as the immediate-transportation number.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28169.)

Drawback on graded pulled wool.

Drawback on graded pulled wool manufactured by Winslow Brothers & Smith Company, of Norwood, Mass., from imported sheepskins.—T. D. 25838 of December 9, 1904, revoked.

TREASURY DEPARTMENT, *May 21, 1907.*

SIR: On the exportation of graded pulled wool manufactured by Winslow Brothers & Smith Company, of Norwood, Mass., from imported sheepskins by the process of washing, brushing, pulling, grading, and in some instances by the further process of scouring and carbonizing, a drawback will be allowed equal in amount to the duty paid on the imported wool so used, less the legal deduction of 1 per cent, said drawback to be divided between the several grades of wool produced pro rata in proportion to the market value thereof as sold in the usual wholesale quantities in the domestic market at the time and place of manufacture.

Each lot of skins operated on shall be given a lot number or mark that shall identify them with the bale or bales covered by a particular invoice, from which they were taken, and the product of each such lot shall be identified by such number or mark during its entire passage through the factory and exportation, and shall be kept separate from other lots.

A special manufacturing record shall be kept showing each lot number; the numbers and marks of the bales as stated in the import invoice comprising the same; the original weights of the skins contained in each bale and in the entire number; the estimated wool contained on the skins when imported; the rate of duty paid thereon; the quantity of wool of each grade produced from said lot, together with the total weight of wool of all grades; the market value of each grade of wool at the time and place of manufacture and the quantity of worthless and valuable waste incurred in the process of manufacture, together with the value of the latter.

The preliminary entry must show the marks and numbers of the shipping packages and the quantity of wool of each grade contained in each package and in the entire shipment.

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The drawback entry shall show the total quantity of each grade of wool exported, and there shall be filed in connection therewith a sworn abstract from the manufacturing records.

In liquidation, the duty paid on the imported wool, less 1 per cent, shall be divided between the several grades of wool produced pro rata in proportion to the value of each at the time and place of manufacture with the proper allowance for waste.

The Department's regulations of December 9, 1904 (T. D. 25838), are hereby revoked.

Respectfully, JAMES B. REYNOLDS,
(17298.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28170—G. A. 6589.)

Embroidered wearing apparel—Initial letters.

Cotton shirts embroidered with initial letters are dutiable under the specific provision in paragraph 339, tariff act of 1897, for wearing apparel embroidered with a letter or monogram, and not as cotton wearing apparel under paragraph 314 of said act. The embroidery work must not necessarily be ornamental in character to bring the articles on which it appears within the purview of paragraph 339.—Expressions of opinion in G. A. 6205 (T. D. 26853) and G. A. 6461 (T. D. 27663) not in harmony with the views herein set forth are to be considered as modified accordingly.

DE VRIES, *G. A.*, dissents.

United States General Appraisers, New York, May 17, 1907.

In the matter of protest 213458 of Morris European and American Express Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of cotton shirts with the initials of the owner embroidered thereon with colored thread. Duty was assessed on the articles at the rate of 60 per cent ad valorem in accordance with the terms of paragraph 339 of the tariff act of 1897, which provides in part for "wearing apparel, handkerchiefs, and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise," * * * and they are claimed to be dutiable properly at 50 per cent under paragraph 314 of said act as cotton wearing apparel.

The ground of the importers' contention seems to be that because the purpose of working the initials on the shirts was for utility rather than ornamentation, paragraph 339 does not apply, but we find no justification in the statute for this view. It was held in the cases of Carson *v.* Nixon (90 Fed. Rep., 409) and Field *v.* United States (*id.*, 412) that "embroidered" is not a commercial term.

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Turning, then, to lexicographical authorities, we find in the Standard Dictionary as one of the definitions of embroider:

> To execute, make, or work in needlework, as on a groundwork of cloth; *as, to embroider an initial on a handkerchief.*

The precise application of this definition to the articles in dispute is obvious; and in view of the specific phraseology chosen by Congress to express its will in paragraph 339, it seems clear to us that the assessment of duty made by the collector should be affirmed.

Under previous tariff acts the courts held that articles embroidered with a single letter were not to be considered as "embroideries" within the meaning of such acts, not upon the ground that the needlework was not embroidery, or because it was not ornamental, but because it was too trifling in amount to warrant the classification as embroideries of the articles on which it appeared. In United States *v.* Amster (71 Fed. Rep., 958), Judge Coxe said:

> The only embroidery upon any of the articles is the initial letter "A." I think the decision in the case of United States *v.* Harden (15 C. C. A., 358; 68 Fed. Rep., 182) is controlling.

In this case of United States *v.* Harden, Judge Shipman had said:

> The embroidery of a single letter upon the corner of the handkerchief is so limited in its extent and of such comparative narrowness as not to require that the handkerchiefs should be regarded as embroidered.

The language employed by the judges shows that they considered the work as embroidery—that is to say, that the initials were produced by embroidery.

It is but the logical inference that it was to meet these decisions that Congress, in amending the statute relating to embroideries, intended to subject just such articles to the rate of duty imposed on embroideries, and the language chosen, quoted in the preamble to this opinion, appears conclusive of this intent.

The mere fact, therefore, that an article has been embroidered with an initial letter or with initial letters, or that needlework has been applied either by hand or machinery that resulted in producing such letters, is sufficient to place the article within this provision. Congress clearly intended to impose the higher duty for the additional labor and expense and not merely for the ornamental effect produced. It is well known that initial letters are placed on articles of wearing apparel for the purpose of identifying ownership rather than for ornamentation, and this is particularly true of the large class of garments that are concealed from view when the wearer appears in public. Furthermore, as embroidering with letters is specially covered by the tariff provision without limitation as to whether or not they are ornamental letters, their size, be it large or small, can make no difference, nor can their style, whether it be plain block letter, Old English, script, or any other. It follows that

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if this protest were to be sustained the particular provision of law added by Congress would be rendered nugatory.

It is no new thing to find that a slight addition to the "make-up" of an article will have the effect of altering its classification for duty purposes, and a case precisely in point is Johnson *v.* United States (123 Fed. Rep., 997), wherein it was held that the insertion of a single thread in the back of a Jacquard fabric, though not showing in the front, had the effect of placing the article within the category of Jacquard goods containing two or more colors in the filing. Without this thread it would have had but one.

Any expressions of opinion appearing in G. A. 6205 (T. D. 26853) and G. A. 6461 (T. D. 27663), that needlework on the body of a fabric or article must necessarily be ornamental in order to constitute such fabric or article an embroidered fabric or article, are to be regarded as modified to conform with the views herein expressed.

DISSENTING OPINION.

DE VRIES, *General Appraiser:* I am compelled to dissent from the conclusions of law and fact reached by my colleagues in this opinion. Two questions are involved:

1. The question of fact whether or not the particular needlework is in fact ornamental.

2. The question of law whether or not needlework must be ornamental in order to constitute embroidery.

In my opinion, it requires but a glance at the illustrative sample submitted as typical of the work done in this case to convince one that the needlework is not ornamental. It consists of three letters, manifestly the initials of the owner of the garment. They are about one-quarter of an inch in height, and stitched on unexposed parts of the garment in a manner that might be characterized as fancy but certainly not ornamental. They are substantially the same as may be found in almost every custom-made garment of the day, particularly shirts, collars, etc. They are as follows:

Indeed, the fact that my colleagues are driven to the position, in order to overrule this protest, that, as a matter of law, embroidery need not be ornamental needlework, and the fact that no finding is made, in the opinion of my colleagues, that the particular work is ornamental, indicates that in their opinions such finding would not be supported. I may, therefore, conclude this branch of the discussion by the statement that the particular needlework is in no sense ornamental nor intended as an ornamentation upon the merchandise,

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but simply placed thereon for purposes of utility, as a laundry mark or to otherwise identify the ownership of the garment.

This leads to the issue of law, which is expressed by my colleagues in the following language:

> Any expressions of opinion appearing in G. A. 6205 (T. D. 26853) and G. A. 6461 (T. D. 27663), that needlework on the body of a fabric or article must necessarily be ornamental in order to constitute such fabric or article an embroidered fabric or article, are to be regarded as modified to conform with the views herein expressed.

The doctrine of this expression, that needlework to be embroidery need not be ornamental, is entirely at variance with my understanding of the import of that word. The majority opinion assumes throughout that the particular initial is an "embroidery" initial, whereas, from my point of view, there may be many needlework initials or effects no one of which, unless ornamental in character, constitutes embroidery, and the assumption is therefore unfounded in fact. Paragraph 339 nowhere states that every needlework initial constitutes embroidery, but speaks only of "articles or fabrics *embroidered* * * * with a letter, monogram, or otherwise," which, to my mind, necessarily implies from the scope of the word "embroidered" that such letter, monogram, or other design must be *ornamental* in character to bring the merchandise within purview of that paragraph.

This, so far as I am able to discover, has been the universal trend and definition of "embroidery" from the sixteenth century to date. Every decision of this Board, every lexicographic authority, and every cognate treatise, in speaking of the subject, assumes or expressly states that to embroider is to ornament, and that an embroidered article or fabric is one so treated with needlework as to become ornamental.

Not alone is that expressed in G. A. 6205 and G. A. 6461, which are in terms overruled by the majority opinion, but in a long line of decisions by this Board, commencing with G. A. 470 (T. D. 11027), decided in March, 1891, soon after the creation and organization of the Board, wherein the Board, speaking upon this subject, states:

> Embroidery has been generally considered to be an *ornamentation* added to a fabric after the completion of the fabric, and all the definitions speak of this ornamentation as being the work of the needle.

In G. A. 1808 (T. D. 13506), decided by the Board in October, 1892, it is stated:

> It is *ornamented* by hand with fancy needlework, said work constituting embroidery.

In G. A. 2392 (T. D. 14634), decided in December, 1893, certain linen doilies were under consideration by the Board, and it was found that they were *ornamented* with elaborate figures and accordingly held by the Board to be properly dutiable as articles embroidered by hand or machinery.

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In G. A. 2579 (T. D. 14950), decided in April, 1894, the Board said:

We think that the goods are embroidered. The fact that silk was used on a linen foundation would seem to indicate that the raised needlework on the mats in question was intended to *ornament* them rather than to serve a useful purpose.

In G. A. 3441 (T. D. 17060), decided in March, 1896, the Board said:

An inspection of the sample in the record shows that it is designed to be cut in slipper vamps, each vamp containing an *ornament* embroidered in silk. A vamp of this description is an "article," and, as it is embroidered, it falls within the language * * * "articles embroidered by hand or machinery."

In G. A. 5282 (T. D. 24243), decided in February, 1903, the sole point for consideration by the Board having been whether or not the scalloped edge upon certain towels constituted embroidery, the Board said:

The stitching on these towels is evidently to serve a useful purpose rather than an ornamentation, and in this differs from the merchandise the subject of decision by this Board, *In re* Sternfeld, G. A. 2579 (T. D. 14950), covering certain embroidered mats, wherein the Board held that the silk stitching which was there done on a linen foundation was intended *to ornament* rather than serve a useful purpose. * * *

While it is evident, as has been found by this Board in previous cases, that the scalloping of the edges of the towels is done for ornamentation, the stitching itself is for the purpose of securing the raw edge.

The conclusion of the Board in this case was that inasmuch as the stitching did not as a matter of fact, in the opinion of the Board, amount to an ornamentation, the needlework was not embroidery.

In G. A. 6205 (T. D. 26853), decided in November, 1905, now on appeal, the subject as to what constituted embroidery was again under consideration. The Board said, after citing numerous authorities:

From these authorities it would appear that that which constitutes embroidery is some *ornamentation* of a fabric by means of an aggregation of one or more kinds of stitches in pursuance of some design the purpose of which is for *ornamentation*. The necessary corollary follows, that where such work is done upon an article for the purpose of completing the article, and does not execute any ornamental figure or design upon the surface of the fabric, and is not done in pursuance of any such design, such work can not be said to be embroidery.

In G. A. 6452 (T. D. 27644), decided in October, 1906, the Board reaffirmed the doctrine of G. A. 6205 (T. D. 26853), citing that case with approval, and announced the same doctrine in the following words:

Whatever of needlework is ornamental, and attached to some foundation fabric, whether it be in the form of points, or in the form of long passementerie, or in the form of filled squares from border to border, if it is of stitches *and ornamental*, it comes clearly within the definition of embroidery.

In G. A. 6461 (T. D. 27663), decided in October, 1906, by this Board, it is stated:

The work is manifestly needlework and admittedly ornamental. *Whatever of needlework is ornamental becomes embroidery.* The lexicographic authorities and the decisions of the courts and this Board are so numerous and uniform upon this subject that citation would be superfluous.

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From my point of view the expression in the last decision, being the latest expression of the Board upon this subject of frequent decision, states all that is to be said upon the subject, and closes a uniform trend of authorities from the organization of the Board down to the present day.

We find the same singular uniformity when we consult the lexicographic authorities. The definition from the Standard Dictionary cited in the majority opinion herein is the secondary definition by that authority. The primary definition is:

Embroider.—To *ornament* with figures or designs in needlework.

The same authority gives the following definition:

Embroidery.—*Ornamental* work done with the needle on cloth, canvas, leather, etc.; also, the art of producing such *ornamentation*, or the fabric so ornamented.

Other authorities are as follows:

Century Dictionary:

Embroider.—To *decorate* with *ornamental* needlework.

Embroidery.—The art of working with the needle raised and *ornamental* designs in threads of silk, cotton, gold, silver, or other material, upon any woven fabric, leather, paper, etc.

Webster's Dictionary:

Embroider.—To cover with *ornamental* needlework or figures.

International Encyclopedia:

Embroidery.—The art of producing, by means of needlework, ornamental designs upon cloth or other fabric.

Various treatises upon this subject have been epitomized in a work by E. Lefébure, entitled "Embroidery and Lace," printed in 1899, wherein at the outset, naming the general classes of tissue ornamentation, it is stated:

Definitions.—There are three methods or processes for producing *ornamental* tissues: * * * (3) By needlework (embroidery).

An examination of the various other works upon this subject discloses the same uniform trend of authority, and I am unable to find any authority upon the subject wherein it is not either expressly assumed or positively declared that the words "embroidery" and "ornamentation" are synonymous when applied to needlework; in fact, that its ornamental character is what alone distinguishes embroidery from other kinds of needlework.

It is undoubtedly true, as stated by my colleagues, that the earlier decisions held that a single embroidered initial placed upon a fabric or article by needlework was not of sufficient extent or importance relatively to be held to throw the goods within purview of such a paragraph as 339 (see G. A. 3432; T. D. 17051), and that Congress met the situation by subsequently declaring in the language quoted from paragraph 339 of the tariff act; but the decision in question

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expressly assumed that the initial was ornamental, and nowhere holds, nor am I able to discover any statutory interpretation that signifies, that an initial, though made of needlework that is not in and of itself ornamental, is embroidery. In fact, aside from numerous decisions of the courts wherein embroidery has been the subject-matter of consideration, and in which it has been assumed and admitted that ornamentation is necessary to constitute embroidery, the only court decision I am able to find wherein the express issue was made in the case of the appeal from G. A. 1808 (T. D. 13506), quoted *supra*. On appeal this case was decided by the United States circuit court for the southern district of New York in 1896 (Neuss *v.* United States, 142 Fed. Rep., 281; T. D. 26597), the court stating:

> The single question is whether they are embroidered articles in fact. *The Board has found that these tidies are ornamentally worked by hand with a needle and thread, and this constitutes embroidery.* The single witness for the importers does not deny this fact; he only says "there is no embroidery in this as known by the trade." Webster defines "to embroider" as "to ornament with needlework," and "embroidery" as "needlework used to enrich textile fabrics." *The evidence as to the process here employed accords with this definition.*

In paragraph 320 Congress has provided a duty of 50 cents per pound and 30 per cent ad valorem upon labels for garments or other articles composed of cotton or other vegetable fiber. Labels, it goes without saying, consist of letters or lettering for the purposes of identification of the manufacturer or owner of the goods.

In paragraph 345 Congress has drawn the distinction between letters that are embroidered, such as provided for in paragraph 339, and letters that are not ornamental and amount only to initials, which is precisely what is upon this article. It states, "handkerchiefs, * * * if hemstitched * * * but not embroidered *or initialed*, fifty-five per centum ad valorem."

These provisions show that Congress has recognized a distinction between initial letters that do not arrive at the dignity of embroidery and letters that are embroidered or ornamental in character, and makes a distinct differentiation from the language in paragraph 339, which speaks of embroidered letters. In other words, Congress recognized that there may be letters upon handkerchiefs or garments which are not so ornamental as to be characterized as embroidery, and has, therefore, expressly modified the language of paragraph 339 by inserting the word "embroidered" as denoting the kind of letters that shall raise the duty to 60 per cent ad valorem.

If it be true that needlework not ornamental shall be held to constitute embroidery, then every garment and every article upon which needlework shall have been employed, regardless of its character as to whether ornamental or not, would be properly dutiable as embroidered—for needlework is embroidery—according to the doctrine announced. I am unable to concur with my colleagues in such a

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conclusion. To my mind embroidery is ornamental needlework alone, and this is not a question of law, but a question of fact to be determined in each case upon the appearance of the particular needlework under consideration.

(T. D. 28171—G. A. 6590.)

Sufficiency of protest.

1. PROTEST, SUFFICIENCY OF—ALTERNATIVE CLAIMS.

A protest making reasonable alternative claims, one of which specifies the applicable rate of duty and the paragraph of the law under which the goods should have been classified, held to be a sufficient compliance with the requirements of section 14, act of June 10, 1890.—Koechl *v.* United States (91 Fed. Rep., 110).

2. SAME—REASONS FOR THE OBJECTION.

Protests stating that the reasons for the objection to the assessment made by the collector are that the goods are "more aptly and specifically provided for" under other provisions of the tariff which are specified, is in form and substance a compliance with the requirement of the statute that the protest shall set forth therein distinctly and specifically the reason for the importer's objection to the collector's decision.—Greely's Administrator *v.* Burgess (18 How., 413); Davies *v.* Arthur (96 U. S., 148); Arthur *v.* Morgan (112 U. S., 495); Schell's Executors *v.* Fauché (138 U. S., 562) and Presson *v.* Russell (152 U. S., 577) cited.

DE VRIES, *G. A.*, dissents.

United States General Appraisers, New York, May 17, 1907.

In the matter of protests 178616, etc., of Hygienic Wood Wool Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

HOWELL, *General Appraiser:* The merchandise is so-called hygienic wood wool in the form of sanitary bandages. The appraiser reports that these bandages are composed of disintegrated wood pulp or wood wool inclosed in cotton gauze, the surface being treated with an antiseptic preparation of a mercurial composition. Duty was assessed thereon at 45 per cent ad valorem under the provision for manufactures in chief value of cotton in paragraph 322 of the act of July 24, 1897.

In all essential particulars the merchandise is similar to that passed upon by the Board in G. A. 6360 (T. D. 27328), and there held to be dutiable as a mercurial medicinal preparation, at the rate of 35 per cent ad valorem, under the provisions of paragraph 68 of said act of July 24, 1897. In that case, however, the importers had failed to claim that the goods were dutiable at 35 per cent ad valorem under said paragraph 68, and the protest was therefore held to be insufficient and was accordingly overruled.

The only claim there made under paragraph 68 was that the goods were dutiable at 25 per cent ad valorem, which rate applies only to

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medicinal preparations not containing alcohol. Paragraph 68 is as follows:

68. Medicinal preparations not containing alcohol or in the preparation of which alcohol is not used, not specially provided for in this Act, twenty-five per centum ad valorem; calomel and other mercurial medicinal preparations, thirty-five per centum ad volorem.

In the present case the protests are in the following form:

Notice of dissatisfaction is hereby given with and protest is hereby made against your ascertainment and liquidation of duties and your decision assessing duty at 35 per cent ad valorem, 45 per cent ad valorem, or other rate or rates on medicated "wood wool" preparations covered by entries below named. *The reasons for objection* under the tariff act of July 24, 1897, are as follows: Said merchandise is not dutiable as assessed. It is otherwise more aptly and specifically provided for. It is covered by and dutiable under paragraph 393 at one-sixth of a cent or one-fourth of a cent per pound, or paragraph 68 at 25 per cent ad valorem. As to such as has been assessed at more than 35 per cent ad valorem, it is alternatively claimed that if not dutiable as above it is covered by and dutiable under paragraph 208 at 35 per cent ad valorem only, or paragraph 68 at 35 per cent ad valorem only.

It will be observed that one of the alternative claims now made is that the goods are dutiable at 35 per cent ad valorem under paragraph 68.

We think these protests must be held to be sufficient. It was decided by the circuit court of appeals for the second circuit, in Koechl *v.* United States (91 Fed. Rep., 110), that protests making alternative claims are valid. The court stated:

Protests upon alternative grounds are proper, and in many cases the question as to which one of several tariff provisions should control in the classification of an importation is so doubtful that the importer is fully justified in leaving it to the courts. It would impose upon the importer a great hardship to compel him to decide this question himself, when he is entitled to the benefit of one of several enumerations, but the particular one is to be ascertained by judicial construction.

In the present case the importer objects to the classification as made by the collector, for the reason, as he alleges, that his merchandise is more specifically provided for in one of three other paragraphs of the tariff law, which he enumerates. Surely such protests are not to be placed in the same category with the "blanket" protests which we have expressed our disapproval of in the Lichtenstein case, G. A. 6534 (T. D. 27885).

We do not think it can be fairly said in the cases now before us that the claims made in the protests are "utterly irreconcilable."

The merchandise, as we have said, is composed of wood pulp and cotton, and has been treated with an antiseptic preparation of a mercurial composition.

Now, let us see what the claims are. They are in the alternative (1) that it is dutiable under the provision for chemical wood pulp, bleached or unbleached (par. 393); (2) that it is dutiable under the provision for manufactures of wood, or of which wood is the component material of chief value (par. 208); (3) that it is dutiable under

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the provision for medicinal preparations not containing alcohol, or in the preparation of which alcohol is not used (par. 68); (4) that it is dutiable under the provision for mercurial medicinal preparations (par. 68).

Taking into consideration the character of the merchandise and its component materials, we think the importer might easily be in doubt as to which of the provisions he has cited would be held to be controlling, and he was therefore justified in claiming under each of them in the alternative.

But it is suggested that the protests are insufficient because they fail to assign any reason why the provisions of the law on which they rely are applicable to the merchandise in question. We do not think this is required. The statement made in these protests that "the reasons for objection" are that the merchandise is "more aptly and specifically provided for" under other provisions of the tariff which are specified is, we think, a sufficient compliance with the statute. Section 14, act of June 10, 1890.

The purposes of a protest are stated by Mr. Justice Curtis in Warren *v.* Peaslee (2 Curt. Reps., 231; case 17198; 29 Fed. Cas., 280), where he says that the act—

> Which requires a protest, had two main objects in view, one being to apprise the collector of the objections entertained by the importer, before it should be too late to remove them, if capable of being removed; the other, to hold the importer to those objections which he then contemplated, and on which he really acted, and prevent him, or others in his behalf, from seeking out defects in the proceedings after the business should be closed, by the payment of the money into the Treasury.

We think the protests now under consideration meet both of these objects, and that they are in "form and substance a reasonable compliance with the law." We know of no court decision which goes so far as to hold that the importer must enter into an argument in his protest to support the claim or claims he makes therein, yet this is precisely what he would be obliged to do if it is held that as to each claim he must assign a reason why the provision of law on which he relies is applicable to his merchandise.

In the case of Greely's Administrator *v.* Burgess (18 How., 413), the Supreme Court said with respect to protests:

> We are not disposed to exact any nice precision nor to apply any strict rule of construction upon the notices required under this statute. It is sufficient if the importer indicates distinctly and definitely the source of his complaint and his design to make it the foundation for a claim against the Government.

And in Davies *v.* Arthur (96 U. S., 148), the court said:

> Technical precision is not required; but the objections must be so distinct and specific, as, when fairly construed, to show that the objection taken at the trial was at the time in the mind of the importer, and that it was sufficient to notify the collector of its true nature and character, to the end that he might ascertain the precise facts, and have an opportunity to correct the mistake and cure the defect, if it was one which could be obviated.

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So, in Arthur *v.* Morgan (112 U. S., 495), the court said :

A protest is not required to be made with technical precision, but is sufficient if it shows fairly that the objection afterwards made at the trial was in the mind of the party and was brought to the knowledge of the collector, so as to secure to the Government the practical advantage which the statute was designed to secure.

So, too, in Schell's Executors *v.* Fauché (138 U. S., 562), the court said :

A protest which indicates to an intelligent man the ground of the importer's objection to the duties levied upon the articles should not be discarded because of the brevity with which the objection is stated.

And in Presson *v.* Russell (152 U. S., 577), the court, in speaking of the requirement of the statute that the protest must set forth distinctly and specifically the ground of objection to the assessment, said:

This involves the designation in substance, though exact accuracy is not required, of the provision under which the importer insists that the goods are dutiable, so as to comprehensively indicate the grounds of alleged error and afford the means of rectification.

Following these authorities, we hold that the protests now before us are sufficient, and accordingly sustain the claim therein made that the goods are dutiable at 35 per cent ad valorem under paragraph 68.

It may be added that the view expressed in G. A. 6360 (T. D. 27328), that an importer must assign a specific reason for his claim, was mere dictum, for the decision in that case was based upon the fact that the protest did not make the proper claim under paragraph 68, and for this reason was fatally defective.

DISSENTING OPINION.

DE VRIES, *General Appraiser:* I dissent. This merchandise consists of hygienic wood wool. It is essentially the same as the merchandise the subject of G. A. 6360 (T. D. 27328). The importers are the same. The protests in those cases were overruled on the ground of insufficiency, for reasons set forth in the opinion of the Board therein rendered, chief of which was that the protest assigned no *reason* therefor. To say that the opinion is *dictum* upon that point loses sight of both the record in that case and the definition of the term. It was one of the necessary points to be determined and was determined; therefore, in no sense *dictum*.

Some of these protests were lodged subsequent to the decision in that case. None of them complies with the terms of that decision in this, that no reasons or grounds for protest are set forth.

These protests are more complete than those the subject of G. A. 6360 (*supra*), in that they claim merchandise to be properly dutiable at 35 per cent ad valorem, as well as at 25 per cent ad valorem. The *reason* why the merchandise is properly dutiable at 35 per

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cent ad valorem, or the *reason* why it was properly dutiable in any event under said paragraph 68, or the *reason* why any of the provisions of that paragraph are applicable to such merchandise, is nowhere set forth in the protest. The protest consists solely of alternative allegations counting upon certain paragraphs and provisions of paragraphs of the tariff law of 1897. The Board has repeatedly decided that a protest which claims the merchandise dutiable under certain paragraphs or certain provisions of a paragraph, although the rate claimed is alleged, but which does not set forth the *reason* why a particular provision is applicable, is insufficient. In this particular in G. A. 6360 (T. D. 27328) the Board comments at length:

The specification of the rate applicable to merchandise, in the presence of thousands of rates, many of them the same provided by the tariff act, is no aid to the mind of the collector in the ascertainment of the provision applicable to the merchandise.

This precise question has been fully considered and adjudicated in several very recent cases: United States *v.* Fleitman, decided by the United States circuit court of appeals for the second circuit, February 23, 1905 (137 Fed. Rep., 476; T. D. 26118) and United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923); Boker *v.* United States (140 Fed. Rep., 115; T. D. 26451, affirmed; 145 Fed. Rep., 1022; T. D. 27192).

* * * * * * *

Section 2931 of the Revised Statutes of the United States, describing the protest which must be filed by the importer, stated:

[He] shall within ten days after ascertainment and liquidation of the duties paid the proper officers of the customs * * * give notice in writing to the collector on each entry, if dissatisfied with his decision, setting forth therein distinctly and specifically the *grounds* of his objections thereto. * * *

This was the language of the acts of February 26, 1845, and February 27, 1877.

The act of June 10, 1890, reenacted the above provision, as follows:

SEC. 14. [The importer must] if dissatisfied with such decision give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, *the reasons for his objections thereto.*

By the latter act this Board was created, and to it appellate jurisdiction of customs cases transferred. In conferring that jurisdiction upon the Board Congress revised and amended in several particulars the requirements affecting protests, presumably to conform with this change. Among other matters, the protestant was required to set forth in his protest, distinctly and specifically, "the reasons for" his objections instead of the "grounds of" the same, as previously required. Obviously the reason for this change was that a new tribunal, exercising in this branch of its duties judicial functions calculated by the act to relieve the courts and Treasury Department of a great accumulation of cases, was created, and as a part of this scheme, to aid in effecting this purpose and to conform the protest to the new jurisdiction, as well as to perfect the protest in its old functions, the changes were made.

It is an elementary principle of law that the objects moving the enactment of a statute are always valuable indices in determining the intent of the legislature in its enactment. Expedition in the discharge of public business was the object of this legislation. A part of this statute being the stated amendments concerning protests, their purpose is made clear, and while the previous decisions uniformly ascribed to the acts of 1845 and 1877 the subservience of two purposes, this amendment, together and in harmony with all other parts of the act, manifestly was to subserve or aid in subservience of a third purpose—the facilitation of public business by expediting the disposition of accumulated and accumulating cases. While the change noted is a

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minor one, it is important. It distinguishes between the "reasons for" and the "grounds of" an objection. It will not be assumed that Congress in making this change indulged an idle purpose.

While it is true, as said in Sutherland on Statutory Construction, that "every change of phraseology does not indicate a change of substance and intent" in a statute, there is a presumption of change of intent arising from a change of language. See Sutherland on Statutory Construction (256). The rule is that "when practicable effect must be given to all the language employed" and "a statute should be so construed as a whole, and its several parts, as most reasonably to accomplish the legislative purpose," and the whole act and its purposes must be looked to in ascertaining the intent. Sutherland on Statutory Construction (239). The indisputable purpose and intent of this statute manifestly being to expedite decision of customs cases, that construction must be given the whole and every part and word of the act that will most subserve that intent and attaches to the amendment in question. The scope of the change is clear. Common understanding and the lexicographers agree that the phrase "grounds of an objection" is satisfied by a statement of conclusions, or in a protest the position taken by a protestant which might be satisfied by the mere statement that one paragraph did not apply but that another did, while the phrase "reasons for an objection" requires more. A reason is that which stands behind a conclusion and supports or justifies it. In the case cited it would imply not only a citation, but a differentiation of two paragraphs in question, showing *not* only that one paragraph is more applicable to the merchandise in question than another, but also *why* the one is more applicable than another.

The fact that some of the earliest adjudications held the statement that one paragraph was not and that another was applicable, a compliance with the statute seems presumptively the reason for this change. This is the only justifiable inference where the legislature changes a word or a phrase previously defined by the courts. The fact of the change as a counterpart of an act enacted to secure expedition of customs adjudications justifies the interpretation stated, because that would conduce more to the facilitation of this public business, and hence harmonize with the general intent of the act, than any other single remedy. We should not, in interpreting language of Congress, stop at any point short whereat the logical deduction carries us. This view perfectly accords with the authorities in that no change of substance or intent is assumed, but holds that Congress intended by the change in the phraseology of the statute to express more clearly the same intent which it had previously deemed sufficiently clearly expressed in the earlier statutes in harmony with the familiar rule of statutory interpretation, that "a change made in the statute may be made to express more clearly the same intent" previously expressed. See Sutherland on Statutory Construction (256).

Since the earlier decisions were not and the subsequent decisions were uniform upon the import of the changed words, the conclusion stated is the natural one. Its soundness is not impeached by frequent expressions of the courts where the difference in phraseology was not suggested, to the effect that the provision does not *materially* differ from the previous statutes. On the contrary, an examination of the facts of those cases and the contentions therein made in connection with the opinions of the courts, strengthens this position, for it will be found upon examination that where this language is used by the court it is in reply to contentions for a more liberal construction of protests and an affirmation by such courts of the doctrine that the act of 1890 does not recede in the rigidity of its requirements in this particular from the language of previous statutes. A close examination of those decisions and a fair reading of them will show, in our opinion, that they are not intended to adjudicate a similarity of statutes, but are intended to hold against a liberalization by amendment. Every canon of statutory interpretation, therefore, it seems to me, affirms an intent upon the part of Congress that every protest must allege the reasons therefor.

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Some of the inferior courts, together with the Supreme Court, have decided, prior to the enactment of the act of 1890, that the *grounds* of the protest must be specifically stated. Thus the circuit court of Maryland in 1851 said:

It is not, therefore, sufficient to object to the payment of any particular duty or amount of duty and protest in writing against it; the claimant must do more—he must set forth in his protest the grounds upon which he objects distinctly and specifically, and these words are too emphatic to be regarded as mere surplusage or to be overlooked in the construction of the law.

The Supreme Court of the United States in the case of Davies *v.* Arthur (96 U. S., 148) uses almost the same language, saying:

Nor is it sufficient to object to the payment of any particular duty or amount of duty, and to protest in writing against it; *but the claimant must do more*, as is evident from the words of the act of Congress. *He must set forth in his protest the grounds upon which he objects* distinctly and specifically, the reason being, as ruled by Chief Justice Taney, that the words of the act requiring the protest are too emphatic to be overlooked in the construction of the provision. * * * Protests of the kind must contain a distinct and clear specification of *each substantive ground* of objection to the payment of the duties.

And so in Herrman *v.* Robertson (152 U. S., 521), the Supreme Court in 1894, in reviewing the provisions of the earlier statutes and decisions thereupon, quoted with approval the case of Heinze *v.* Arthur's Executors (144 U. S., 28), and stated among other things:

The importers were bound only to state, as they did, that the duty of 60 per cent was illegal, *and why* it was illegal.

Moreover, it will be noted that where this general language as to similarity in statutes is used by the courts the precise point was not called to their attention or pressed upon them for decision as to the different phraseology in the two acts. Wherever and whenever, however, since the enactment of the act of 1890, the precise point was urged upon the court that the protest must set forth the *reasons* for the objection of the protestant, as distinguished from and in addition to the mere citation of the rate and paragraph applicable, the courts have held that such reasons must be so stated in order to constitute a valid protest. Thus in Boker *v.* United States (140 Fed. Rep., 115; T. D. 26451) the recital of the issue is:

The Board was of opinion that the protest did not satisfy the requirements of section 14, customs administrative act of June 10, 1890, which prescribes that in making protests against the assessment of duty by collectors of customs an importer shall "set forth therein distinctly and specifically * * * the *reasons* for his objections."

The court said:

The sole question here relates to the sufficiency of the protest. Duty was assessed under paragraph 137 of the act of 1897 at 45 per cent ad valorem. The importer protested, stating as follows: "We claim that the said goods are properly dutiable under the provisions of paragraph 137 of the tariff act of July 24, 1897." The paragraph is a long one; the protest fails to state *on what grounds* the objection was made, *or* what *rate of duty* is claimed. It is therefore insufficient within the rule that "the importer shall set forth in his protest *distinctly and specifically the reasons for his objections to the assessment.*" United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923).

On appeal to the United States circuit court of appeals for the second circuit this decision was unanimously affirmed. See T. D. 27192.

In a later case, decided by the United States circuit court for the southern district of New York February 22, 1906, Rosenberg *v.* United States (146 Fed. Rep., 84; T. D. 27183), the protest was "that such merchandise is dutiable at the appropriate rate and under the proper paragraph according to the component material of chief value." The court said:

This does not seem to set forth *either* distinctly or specifically *what the collector ought to know in order to understand the reasons* for the objections on which the importer must stand. Davies *v.* Arthur (96 U. S., 148). See, also, United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923).

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This view seems to be in perfect accord with the fundamental principle above stated controlling the sufficiency of protests in that "it must make known to the collector the true *nature and character* of the objection of the importer to the end that the collector may ascertain the precise facts." See Davies *v.* Arthur (96 U. S., 148). For if it be true, as is now uniformly held by the courts, that to come up to this standard of precision the protest must cite the paragraph and portion of paragraph upon which the importer relies, it follows *a fortiori* that he should advise the collector of the reasons he has in his mind why the one is more applicable than the other, setting out fully the factors of differentiation upon which he relies, that the collector may be fully advised of his contention and not be compelled to exhaust all the possible categories of reason that would support the differentiation between the paragraphs in question as applied to the particular merchandise imported. In this view it seems to us perfectly clear that this statutory requirement imposes upon the importer the duty both under the older and later statutes, that neither is complied with unless, in addition to referring to the statutory provisions controlling or relied upon, the protestant also sets forth his reasons clearly and distinctly why he claims it so, and, further, that upon trial he is not only confined to the provisions of law cited and the rate pointed out in his protest, but he can not urge other reasons than those distinctly and clearly expressed in his protest.

In the light of subsequent adjudications this is the one salutary provision of the act that conduces to specific protests. It has been held by the courts that alternative protests are permissible. Koechl *v.* United States (91 Fed. Rep., 110). Under this rule a rapidly increasing practice has followed of filing blanket *protests* covering a multitude of rates and paragraphs, without any differentiation or allegation of reasons why any one is applicable. *Non constat*, it might with much reason be contended under this decision that a blanket protest which counted in the alternative upon every rate and paragraph of the tariff act, *and which assigned no reason* why any particular rate or paragraph was the applicable one save that each was and the others were not applicable, by *reductio ad absurdum* shows the fallacy of that position. If, however, the importer is required to allege some reason founded upon the character of the goods, the law as written, or otherwise, as a prerequisite to being heard, such blanket protests could not prevail. We are unable to comprehend why any party should have the right to challenge any official act, or invoke the time and labor of any official tribunal in the solution of any complaint, when he himself can conceive no reason to support it. This Board was not created to ferret out possible wrongs, but decide claimed errors "distinctly and specifically set forth" with "the reason for his objections thereto." in a protest showing upon the face that the objection was at the time of filing the protest in the mind of the importer. Herrman *v.* Robertson (152 U. S., 521)

No appeal was taken from that decision by the importers, who are the importers in this case, and in consequence the decision was acquiesced in by them.

In G. A. 6361 (T. D. 23729) the Board distinctly and precisely overruled protests upon the same ground and upon that ground alone.

And so in a later case, G. A. 6447 (T. D. 27662), the Board, after consideration of the subject, reached the same conclusion. In each of these decisions by the Board numerous decisions of the Supreme Court and of various circuit courts of appeals were cited and quoted in support of the position taken.

I am of the opinion, therefore, that these protests are insufficient, in that no reason is assigned therein.

Some of these protests were filed after the rendition by the Board of the decision in G. A. 6360 (T. D. 27328) by the same importer

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covering the same class of merchandise. Those protests do not follow that decision in the particulars stated, but ignore its plain requirements supported by numerous court and Board decisions. While it may be true that greater liberality of construction would be allowed with reference to protests filed before a particular adjudication, such can not be claimed with reference to a protest which plainly ignores the rules laid down by numerous decisions of the courts and the Board. Nor can the license of custom be invoked, for this is a question dealing with the plain language of a statute. Custom long concurred in often makes law, but has never been held to repeal a statute.

To say that goods are not dutiable under one paragraph *because* they are dutiable under another is no more than to say a thing is manufactured because it is not unmanufactured. Such language assigns no reason why they are dutiable under either paragraph. What the statute demands is the underlying *facts* or *legal conditions* why the one paragraph is and the other is not applicable. These facts or conditions naturally reside in the character or condition of the imported merchandise or the peculiar context of the law. They should be in the mind of the importer when he protests, and the protestant who protests without being able to assign any reason why he deems one paragraph more applicable to his merchandise than another is not, in my judgment, entitled to invoke any tribunal in the discovery of such for him.

In my judgment, the protest should show the nature, character, and qualities of the protestant's merchandise so recited with the claimed rate and applicable provision of law that the collector could decide therefrom if it is well taken. Such a protest would show the reasons therefor, enable the collector to decide thereupon if well taken, and confine the importer's limitations on trial. Such a protest would conform with the intent of the act of 1890 and require no more than the statement of facts well known to every importer at the time of protest.

For example, in the present case, the importer must know whether or not this merchandise was or was not a *mercurial* medicinal preparation—the material fact in the case, the allegation of which would have enabled the collector to determine at once the proper rate of duty and applicable part of paragraph 68, whether 25 per cent or 35 per cent, and the absence of which allegation left the collector without any possible data before him to determine the proper rate of duty. Consequently he must reject the protest, because it did not advise him the real objection in the importer's mind, or cause the goods to be analyzed; in other words, hunt up evidence to determine a fact clearly in the importer's mind, and which the law required him to allege in his protest. No example could better illustrate the

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wisdom of the provision in question, and how greatly its enforcement would expedite customs matters.

To hold that a mere recital of paragraphs and rates and not a definition of reasons is sufficient protest, to my mind reads out of the statute a provision of law perfectly plain and unambiguous.

(T. D. 28172—G. A. 6591.)

Wafers—Confectionery.

Certain bakery products, in the form of biscuits, thin wafers, and fancy forms (such as almonds, acorns, etc.), composed of pastry, together with, in most instances, a sweetened filling, held to be dutiable under section 6, tariff act of 1897, as nonenumerated manufactured articles, at 20 per cent ad valorem, rather than under the provision for "sugar candy and all confectionery," in paragraph 212.

United States General Appraisers, New York, May 17, 1907.

In the matter of protests 949*h*, etc., of Francis H. Leggett & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The goods involved in these cases are manufactured by Huntley & Palmers (Limited), English manufacturers of biscuits, and consist of bakery products in the form of biscuits, thin wafers, and fancy forms, such as almonds, acorns, etc., composed of pastry, together with, in most instances, a sweetened filling.

The articles are described in the invoices as "acorn," "Alaska wafers," "Algeria," "Arctic wafers," "banquet (mixed)," "Carmencita," "cherry wafers," "chocolate fingers," "chocolate wafers extra," "cocoanut wafers," "commodore wafers," "cream finger," "dessert wafers," "dessert (mixed)," "domino wafers," "engadine wafers," "fruit," "ice wafers," "jam fingers," "Mecca wafers," "olive," "opera wafers," "Philippine," "president wafers," "royalty (mixed)," "society," "sugar wafers," "table," "tasting samples," "walnut, rich," or by similar descriptive terms.

All these varieties were assessed under the provision in paragraph 212, tariff act of 1897, for "sugar candy and all confectionery," either at 4 cents per pound and 15 per cent ad valorem, or at 50 per cent ad valorem. They are claimed to be dutiable at 20 per cent ad valorem as unenumerated manufactured articles under section 6, with alternative claims under various other paragraphs.

It is satisfactorily shown by the evidence that the goods are of the same general character as those considered in the case of Thomas Meadows & Co., G. A. 5830 (T. D. 25731), affirmed by the circuit court in United States *v.* Meadows (147 Fed. Rep., 757; T. D. 27448) and by the circuit court of appeals in United States *v.* Meadows (T. D. 28004).

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The Government has accepted the decision of the circuit court of appeals as settling the issue (T. D. 28024), and the result of the litigation is that products of the nature of those under consideration are not to be classed as confectionery for tariff purposes, but as unenumerated manufactured articles under section 6.

Paragraph 212 further provides:

The weight and the value of the immediate coverings, other than the outer packing case or other covering, shall be included in the dutiable weight and the value of the merchandise.

It will follow as a mere incident of the change in classification that the immediate coverings (together with the outer coverings) will be subject to duty at the rate imposed upon the merchandise, to wit, 20 per cent ad valorem, and no greater rate, and that, where the amount of duty collected upon the coverings under the provision quoted exceeds what would be due when computed at the rate of 20 per cent upon both inside and outside coverings, all such excess will be refunded.

We accordingly hold that all merchandise returned by the appraiser as confectionery and assessed under said paragraph 212 is dutiable, together with its usual coverings, at 20 per cent ad valorem under section 6, and sustain the protests and reverse the collector's decision to this extent. In all other respects the protests are overruled.

(T. D. 28173—G. A. 6592.)

Figured cotton cloth.

The word "threads" as used in paragraph 313, tariff act of 1897, is used in the same sense as in all the countable provisions of the cotton schedule, and includes whatever of cotton fiber or filaments there is used in the fabrication of cotton cloth or articles.

United States General Appraisers, New York, May 17, 1907.

In the matter of protest 159660 of the R. B. Maclea Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise consists of cotton cloth. It was assessed for duty under the provisions of paragraphs 304 to 309, tariff act of 1897, at the countable rates, and in addition thereto at 2 cents per square yard under paragraph 313 of said act. Paragraphs 304 to 309 are the well-known provisions of the cotton schedule, providing duties upon cotton cloth according to weight, count of threads, value, etc.

Paragraph 313 reads:

Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or

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otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The merchandise consists of ordinary cotton cloth into which other than the ordinary warp and weft threads are introduced for the purpose of forming a figure. These extra threads have been clipped off on the back at interval spaces where they are not interwoven. The sole contention of the importers is that the substance used to form the figures is not "threads" and, therefore, the extra 2 cents per square yard duty does not attach. In a brief filed in the case, as well as in the oral contentions at the hearing, it is asserted that the substances herein are filaments or yarns which do not arrive at the dignity of threads and, therefore, not included within the term "threads" as used in paragraph 313.

An examination of all the provisions of the cotton schedule fails to disclose wherein the word "threads" as used in paragraph 313 in anywise differs from the word "threads" as used in the other provisions of that schedule. In all the provisions therein, when speaking of the component factors of cotton cloth, the word "threads" is used. Manifestly, it is used interchangeably with and to include yarns and other filaments of textile fiber employed in the manufacture of cotton goods. From an examination of the merchandise in question it appears to us that there is no substantial difference between the filaments or threads which are used to form the figures and those which are used to form the body of the fabric. We are of the opinion that whatever the character of the yarns or "threads" used to form the figures in the cloth, they would be within the purview of paragraph 313. The fact that, after having been thrown in by whatever process to form the figure, the under side has been at intervals clipped off does not change the character of the material used, though this is the contention of the importers. Suffice it to say, in complete answer to this contention, that the fabric at a stage when completely woven has not the backs trimmed and, therefore, the goods, on the very contention of the importers, at that stage would contain other than the ordinary warp and filling "threads" introduced for the purpose of forming a figure. We are unable to discover any merit in this contention. The fabric must be woven before it can be clipped, and this clipping would not destroy the character of any of the clipped components

The same character of goods was before the circuit court of appeals for the second circuit in the cases of Mills *et al.* *v.* United States and Claflin *v.* United States (114 Fed. Rep., 257 and 259), the court holding the same dutiable under paragraph 313.

The protest is overruled and the decision of the collector affirmed.

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(T. D. 28174—G. A. 6593.)

Cauliflower in brine.

1. "PRESERVATION"—"PREPARATION"—USE OF BRINE.

The use of brine to effect the temporary preservation of vegetable substances to be used as raw materials for manufacture, which are otherwise in a crude state, is not a "preservation" or "preparation" in the tariff sense.

2. CAULIFLOWER IN BRINE.

Cauliflower imported in brine, which is intended to be used in the manufacture of pickles after freshening with water, and which, except for the immersion in the brine, incidental trimming or cutting, and accidental breaking of the heads in some instances, is substantially in the condition of the fresh vegetable after it has been cut from the stalk, is dutiable as a vegetable "in its natural state," under paragraph 257, tariff act of 1897, and not as a vegetable "prepared or preserved," under paragraph 241.

HAY, *G. A.*, dissents.

United States General Appraisers, New York, May 21, 1907.

In the matter of protest 22390 of Strohmeyer Arpe Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The appraiser reports the merchandise in question to be "cauliflower, trimmed, washed, and packed in brine for preservation during transportation." Except for the immersion in brine, incidental trimming or cutting, and accidental breaking of the heads in some instances, the plant appears to be substantially in the condition of the fresh vegetable after it has been cut from the stalk. It is placed in brine to preserve it during transportation and until it is used in the manufacture of pickles, before which latter process it is subjected to a bath of cold water for the purpose of removing the salt and restoring it as nearly as may be to the condition of fresh cauliflower.

The question presented is whether cauliflower in this state is dutiable as assessed by the collector, at 40 per cent ad valorem, under the provision in paragraph 241, tariff act of 1897, for "all vegetables, prepared or preserved, including pickles and sauces of all kinds," or, as claimed by the importers, at 25 per cent ad valorem under paragraph 257, covering "vegetables in their natural state."

Brine or salt water is frequently employed as a medium in which to import vegetable substances, otherwise in a crude state, where it is desired to effect their temporary preservation and place them in the hands of manufacturers in this country as the raw materials for more advanced products. To treat such commodities as crude, or not "preserved" in the tariff sense, seems in accord with common sense, the policy of the law, and the trend of recent decisions of the courts and the Board. To this class of goods belong orange and lemon peel imported in brine for the purpose of manufacture into candied or preserved peel; cherries in salt water for making candied fruit; angelica plant in brine to be used as the base for glacé angelica;

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ginger root in brine for the manufacture of preserved or candied ginger root. All these substances have been held to be unpreserved for the purposes of tariff classification. Hills Brothers Company *v.* United States (123 Fed. Rep., 477); Causse Manufacturing Company *v.* United States (150 Fed. Rep., 419; T. D. 27513); Causse Manufacturing Company *v.* United States (T. D. 27751); *In re* Reboulin, G. A. 5547 (T. D. 24917); *In re* Vantine, G. A. 6511 (T. D. 27799).

The case of Hills Brothers Company *v.* United States (123 Fed. Rep., 477) involved the question whether halved lemons in brine were free as "fruits in brine," or "lemon peel, not preserved," under paragraph 559 or 627 of the tariff act of 1897, or dutiable as "lemon peel, preserved," under paragraph 267. The circuit court of appeals held that lemons cut in two were "fruit" rather than "peel," but it observed in the course of its decision, "it is questionable whether lemon peel immersed in brine is 'preserved' in a commercial sense or within the meaning of paragraph 267." And later, when the question whether orange and lemon peel in brine were the "orange peel or lemon peel, preserved," of paragraph 267 of said act, or the "orange and lemon peel not preserved," of paragraph 627, came before the circuit court in the Causse Manufacturing Company case (150 Fed. Rep., 419; T. D. 27513), it held the latter provision to applicable, observing:

> The brine protects the peel from decay and does not affect its properties or quality. * * * It rather seems, however, that the brine is a mere covering or packing for protection in transportation as from cold or heat, and which when separated from the peel leaves that in its natural state, as the taking off of any covering would; and that by this protection the peel is not preserved as such fruits or fruit products are within the meaning of the tariff law.

From the foregoing authorities it would appear that discussion was closed upon the question whether an article like that in question in this case is "preserved." There is more difficulty in determining whether it is "prepared" within the meaning of said paragraph 241. But within a month the circuit court of appeals for the second circuit has held that the process of slicing mushrooms, so as to facilitate their drying, and of drying them in the sun, does not so change the nature of the mushroom as to remove it from the provision for vegetables in their "natural state" to that of "vegetables, prepared or preserved." Zanmati *v.* United States (T. D. 28054). Manifestly, cauliflower in brine like that in this case more closely approximates the condition of the growing plant, which typically is in the natural state, than do sliced and dried mushrooms, and the end sought by the preparation is in both instances the same: The temporary preservation of the substance until it can be used practically as a fresh vegetable is used. The Board has recently held that ripe olives imported in brine for such temporary preservation are not "prepared," and, not being "green," are excluded from the provision in paragraph

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264 of the present act for "olives, green or prepared." *In re* Zucca, G. A. 6505 (T. D. 27793). The language of the circuit court in Boericke & Runyon Company *v.* United States (126 Fed. Rep., 1018; T. D. 24886) also has a bearing upon the question. There the question was whether certain herbs immersed in alcohol for preservation were dutiable as unmanufactured articles or as "alcoholic compounds" or "drugs advanced in value or condition." In holding them to be unmanufactured the court said:

I am impressed with the importers' contention that these leaves and roots, which the evidence clearly shows are surrounded with alcohol for the purpose of keeping the leaves and roots as exactly as possible in their natural condition, and not for any purpose of changing them, are manifestly not a compound with such alcohol. As imported, the merchandise either consists of natural fresh leaves and roots, kept in that condition for transportation and subsequent use as such, the leaves and roots being substantially the thing imported, and the alcohol a mere vehicle, of no more importance than the cask in which they are packed; or else it consists of the leaves and roots and the alcohol as the factors in a loose and temporary association for the purpose, as aforesaid, of maintaining the roots and leaves in their natural condition and fit to subserve their intended use.

The case of Causse Manufacturing Company *v.* United States (T. D. 27751) may seem to lay down a somewhat different principle. The goods there in controversy were intended to be used in the manufacture of candied fruit, and consisted of cherries prepared by removing their pits, washing them several times to remove the dirt and free juices, and fumigating with sulphur, after which they were packed in casks in a weak solution of salt and water. These goods were held by the court of appeals not to be fruits "preserved," within the meaning of paragraph 263 of the act of 1897. The court, however, considered whether they might not be dutiable as "cherries," under the first part of paragraph 262 of said act, which provision it construed to refer to cherries in their natural state, but reached the conclusion that they had been prepared within the meaning of the latter portion of the same paragraph, covering "edible fruits * * * prepared in any manner." Nevertheless, there is no necessary inference that the court would have regarded immersion in salt water alone as a "preparation," and if there is conflict between the above decision and the more recent Zanmati case involving mushrooms, it seems to the Board that the latter has a more direct application to the case at bar.

Further difficulty is suggested by the case of Choy Chong Woh & Co. *v.* United States (T. D. 28053), decided by the circuit court of appeals for the second circuit at the same time as the Zanmati case (*supra*). In the former decision mushrooms dried in order to preserve them and placed in hermetically sealed tin packages holding from 30 to 45 pounds were held to be dutiable as "mushrooms, prepared or preserved, in tins," under paragraph 241, rather than as "vegetables in their natural state," under paragraph 257. Since it

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is the principle of the Zanmati case and the case of Kraut *v.* United States (139 Fed. Rep., 94; T. D. 26161) that drying mushrooms, even when facilitated by slicing, does not advance them from their natural state, it must be that the mere placing of the mushrooms in the large tin boxes and sealing them was deemed by the court of appeals in the Choy Chong Woh & Co. case to constitute a preparation or preservation. The size of the tins in the case referred to indicates a bulk importation, and we should suppose that the decision would govern the classification of all mushrooms in tin packages, regardless of the size of the package. It is well known to customs officers that mushrooms are often packed in tin cartons, holding at times as much as 200 pounds, for protection from dampness in transit and handling. G. A. 6038 (T. D. 26367); G. A. 6183 (T. D. 26811). Applied logically and consistently, then, it seems that the doctrine of this case would require that a vegetable in its natural state be considered a prepared or preserved vegetable whenever packed in a tin covering for better protection during transportation. How can we avoid the conclusion that packing the vegetable in brine for preservation in shipment has a like effect? If the Choy Chong Woh case stood alone, that result would be a corollary. In the apparent conflict of authority that exists we can only elect to follow those rulings which lead to the most equitable disposition of the case in hand.

The Board is likewise of the opinion that the case of Alart *v.* United States (61 Fed. Rep., 500) would not be followed by the courts in the present state of the law. There the circuit court for the southern district of New York held that cauliflower packed in dry salt for preservation during transportation was dutiable as a vegetable "prepared or preserved" under paragraph 287 of the tariff act of 1890 rather than as a vegetable "in its natural state" under paragraph 288. No discussion of the question is found in the decision of the court, which thought decisive the case of Presson *v.* Russell (152 U. S., 577), where salt-cured codfish were regarded by the Supreme Court as fish "prepared and preserved." But there is a very obvious distinction between the curing of fish by salt and the methods employed in the Alart case and the present case to arrest temporarily the decay of a vegetable.

We agree with counsel for the importers that a process the very purpose of which is to enable the cauliflower to retain its natural properties should not be held to advance it from the natural state, and neither do we consider that the incidental trimming and washing to which it has been subjected have such effect.

The protest is sustained and the collector's decision reversed.

CONCURRING OPINION.

SOMERVILLE, *General Appraiser*: I concur in the opinion of Judge Waite in this case for the reason that in my judgment the

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question at issue was determined in effect in the case of the Causse Manufacturing Company *v.* United States (150 Fed. Rep., 419; T. D. 27513), where certain orange and lemon peel contained in brine was held to be free of duty under paragraph 627 of the tariff act of 1897, which places on the free list orange and lemon peel "*not preserved*, candied or dried." The article had been assessed by the collector under paragraph 267 of said act as orange peel or lemon peel, "*preserved.*" When that case was before the Board for consideration I was of the opinion that the classification made by the collector was correct, and that the word "preserved" had no technical or commercial meaning different from its ordinary signification, namely, to put in a condition of preservation so as to resist fermentation or decay. *In re* Causse Manufacturing Company, G. A. 6039 (T. D. 26368).

A dissenting opinion was filed in that case by Judge Waite, who was of opinion that orange and lemon peel immersed in brine for the purpose only of arresting decay to admit of successful transportation, was not orange or lemon peel, preserved, within the meaning of paragraph 267, but should be admitted free as orange and lemon peel "not preserved." In support of my opinion I cited and relied on the case of Presson *v.* Russell (152 United States, 577; 14 Sup. Ct. Rep., 728), where certain fish, which were preserved by being dry salted, were held to be fish prepared or preserved, within the meaning of the tariff act of 1883; also the case of Alart *v.* United States (61 Fed. Rep., 500), where certain vegetables, namely, cucumbers and cauliflower packed in salt, were held to be dutiable under paragraph 287 of the tariff act of October 1, 1890, as vegetables prepared or preserved, and not under paragraph 288 of said act, as vegetables in their natural state, not specially provided for.

Other decisions were cited which were supposed to sustain this view. On appeal, however, to the circuit court for the southern district of New York, this decision was reversed, the following language being used by Judge Wheeler:

> The brine protects the peel from decay and does not affect its properties or quality. The Board divided in opinion, setting forth the different views fully, to which but little can be added. It rather seems, however, that the brine is a mere covering or packing for protection in transportation, as from cold or heat, and which when separated from the peel leaves that in its natural state, as the taking off of any covering would; and that by this protection the peel is not preserved as such fruits or fruit products are within the meaning of the tariff law.

This decision was acquiesced in by the Treasury Department (T. D. 27551). In deference to this decision and in view of the apparent conflict between the various decisions of the court cited in the opinion of Judge Waite, I defer to his views and concur in the conclusion that the collector's decision should be reversed. Unembarrassed by that decision, I would reach a different conclusion.

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DISSENTING OPINION.

HAY, *General Appraiser:* I do not agree with the conclusion reached by my colleagues in this case. The fourth subdivision of Schedule G of the tariff act of 1897 covers farm and field products. There are 18 different paragraphs in this subdivision. In these paragraphs a very large number of the commodities that are properly known as farm and field products are specifically provided for, and there are two general provisions in one or the other of which all other products of such class are intended to be embraced. They are to be found in the concluding clause of paragraph 241, which reads as follows:

All vegetables, prepared or preserved, including pickles and sauces of all kinds, not specially provided for in this Act, and fish, paste, or sauce.

And in paragraph 257, which reads:

Vegetables in their natural state, not specially provided for in this Act.

The former of these provisions is, by a gradual process of construction, being bereft of all meaning.

The question in this case is whether the commodity under consideration is a prepared or preserved vegetable or a vegetable in its natural state, as it is not specifically provided for in the other paragraphs of the law. Aside from judicial construction, the words prepared and preserved have a distinct meaning. As used in the sense in which it is used in this act, the word "prepared" is defined by the Century Dictionary to mean—

To set in order or readiness for a particular end; make ready; provide; adapt by alteration or arrangement.

And the word "preserve" is defined by the same dictionary:

To prepare in such a manner as to resist decomposition or fermentation; prevent from spoiling by the use of preservative substances with, or without, the agency of heat.

With these two paragraphs of the law before us, without previous judicial interpretation, there could be but little doubt that "cauliflower, trimmed, washed and packed in brine for preservation" would be said to be both prepared and preserved within the meaning of these words as used in ordinary speech.

It is a well-established rule of statutory construction that words used in a law are to be given their ordinary meaning, unless by some commercial or technical usage they are clearly established to have had a different meaning, or by such commercial or technical usage a different shade of meaning has been given to them prior to and at the time of the enactment of the law in which they occur. This exception to the ordinary rule, while as important and as well established as the rule itself, should be applied with very great care in the interpretation of words used in a tariff law, lest thereby the law be disintegrated and its wise and salutary purposes be defeated. This question does not arise directly in this case, as there is no evidence of the words in question having had any commercial meaning other

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than or different from their ordinary meaning, but it was testimony on this subject which doubtless influenced some of the decisions my colleagues are seeking to follow in this case.

It is the duty of this Board to correctly interpret the law. It is also doubtless its duty to follow the decisions of the higher tribunals upon all questions where the issue is clearly formed. In this case my colleagues do not pretend to be following any case directly in point, but rather a principle which they think is established by cases cited in the majority opinion. There is a great difference between principle and precedent. I am unable to find any principle laid down by the decided cases upon this question. Each case seems to have been decided upon the facts presented, and the one most directly in point is the case which my colleagues set aside and refused to follow. That is the case of Alart *v.* United States (61 Fed. Rep., 500), which is the only decision of either the Board or the courts cited in the majority opinion, which is based upon an expression of the Supreme Court of the United States. In that case a part of the merchandise under consideration was cauliflower, the same as in this case, and it was packed and shipped in dry salt. The Board held that it was a prepared or preserved vegetable and dutiable as such. The court sustained this, basing their decision upon an expression of the Supreme Court in the case of Presson *v.* Russell (152 U. S., 577). There can be but little difference between packing cauliflower in dry salt for the purpose of shipment and packing it in salt brine for the purpose of shipment. Reaching the conclusion as I do that the decided cases establish no principle of law, I feel that the Board should, in following them, seek out and follow that which is most nearly parallel to the case at bar. By this course we would conserve, rather than destroy, an explicit provision of the tariff law.

(T. D. 28175—G. A. 6594.)

Old steel rails.

Old steel rails which retain their identity as rails, although because of their pattern they are not likely to be used for railway purposes in this country, are dutiable under the specific provisions of paragraph 130, tariff act of 1897, for steel rails, and not as scrap steel fit only for remanufacture under paragraph 122.—Dwight *v.* Merritt (140 U. S., 213); Downing *v.* United States (122 Fed. Rep., 445), and Illinois Central Railroad Company *v.* McCall (147 Fed. Rep., 925; T. D. 26639) followed. Ginsburg *v.* United States (147 Fed. Rep., 531; T. D. 27228) and G. A. 6214 (T. D. 26871) distinguished.

United States General Appraisers, New York, May 21, 1907.

In the matter of protests 23034, etc., of W. P. Plummer against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of steel rails, upon which duty was assessed at the rate of seven-twentieths of

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a cent per pound under the provisions of paragraph 130 of the act of July 24, 1897. The importers claim that they are dutiable properly at $4 per ton, under paragraph 122, as scrap fit only to be remanufactured.

From the testimony it would appear that the rails are 10 to 20 feet in length and are of an obsolete pattern or type at least for use in this country. They are girder rails, not worn to any extent, and are not useless as rails. The importer's contention that they are properly dutiable as scrap steel under the provisions of paragraph 122 of the tariff is subject of course to the specific provision contained in said paragraph that nothing shall be deemed scrap steel except waste or refuse steel fit only to be remanufactured. That the rails are in fact in the nature of waste or refuse must be affirmatively proved by the importers.

A question similar to that here involved was passed upon in Dwight *v.* Merritt (140 U. S., 213). In that case iron rails imported for the purpose of being broken up and remanufactured, and not suitable in this country, were nevertheless held dutiable as iron bars and not as wrought scrap iron. Following this in G. A. 4659 (T. D. 22019), old brass cannon no longer fit for use as ordnance, but which were still in manufactured form and had not been broken up, were held to be manufactures of metal and not old copper fit only for remanufacture. This decision of the Board was affirmed by the circuit court (116 Fed. Rep., 779) and by the circuit court of appeals (122 Fed. Rep., 445). The same question was at issue in the case of the Illinois Central Railroad *v.* McCall (147 Fed. Rep., 925; T. D. 26639), wherein steel rails which had not lost their character or identity as rails, and which were shown to be unfit for use other than as scrap steel by reason of certain defects, were nevertheless held to be rails and not scrap steel.

The importer has failed to distinguish his cases from those above cited. The record includes two affidavits furnished by the importer; the testimony of a witness in behalf of the importer, and the testimony of the examiner who passed the goods. The affidavits admitted in evidence are of little weight. They do not show that the rails have lost their identity as rails, and the declaration in each that they are unfit and unsuitable for the original purpose for which made is merely the conclusion of the affiant. The reasons for such conclusion are not stated, and it is reasonable to hold that the type, style, and shape of the rails was the only cause for the inference.

The importer has failed to appear in his own behalf and no representative of the firm has appeared to offer testimony. The broker who negotiated the sale of the goods was the witness for the importers, and his evidence that the merchandise was "fit only for remanufacture" is qualified by his admission that such inability to use the arti-

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cles as rails for street railway purposes in this country, is on account of their antique shape, pattern, etc., and in no part of the record is there evidence that these rails can not be used for the purpose that they were manufactured for, and originally used as, on account of being worn-out by use or rendered unfit for further use by the wear and tear they were subjected to while in long and continued use as rails. It is this that distinguishes them from the broken rails which were held in G. A. 6214 (T. D. 26871), to be dutiable as scrap steel, for they were only pieces of rails. As laid originally they had been welded end to end, and when torn they had to be broken in the middle, and as imported they were no longer rails but pieces of scrap fit only to be remelted. It is this also that distinguishes Ginsburg *v.* United States (147 Fed. Rep., 531; T. D. 27228), cited by counsel for the importer. The fish plates in that case were found to be scrap, on the ground that they were in broken and worn condition. No such evidence is present in this case.

The testimony of the examiner who passed the goods is to the effect that the rails are exactly as returned by him, "street railway rails, fitted for use as such," etc., and that, though dirty, they were in just as good condition as if new, and that no evidence of wear was to be found. We overrule the protests and affirm the decision of the collector in each case.

(T. D. 28176—G. A. 6595.)

Ramie sliver.

Ramie sliver or rovings are properly dutiable at the rate of 45 per cent ad valorem, by similitude to cotton sliver or rovings, under the provisions of paragraph 302, tariff act of 1897.

United States General Appraisers, New York, May 21, 1907.

In the matter of protest 171152 of Wm. F. Allen & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise consists of ramie fiber. It was assessed for duty at the rate of 45 per cent ad valorem as a manufacture of ramie under the provisions of paragraph 347, tariff act of 1897, which reads:

347. All manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this Act, forty-five per centum ad valorem.

It is claimed to be properly dutiable directly or by virtue of the

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similitude clause, section 7, at the rate of 10 per cent ad valorem under the provisions of paragraph 463 of said act as waste, which paragraph and section read:

463. Waste, not specially provided for in this Act, ten per centum ad valorem.

SEC. 7. That each and every imported article, not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this Act as chargeable with duty, shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned. * * *

Controversy has arisen as to the precise character of the merchandise as imported. It consists of fibers of ramie laid parallel to one another so as to produce a rope-like effect, strands of which in the admitted sample are 15 feet or more in length, the fibers adhering perfectly and the strands being of uniform thickness. The size is about that which would run easily through a hole 1 inch in diameter. In all and every essential particular it resembles a cotton roving or sliver. At the hearing the examiner who examined the merchandise testified that "this particular merchandise was at least 50 yards in length," and that the sample which was produced as illustrative was not a fair sample of the merchandise as imported.

Various witnesses were introduced as to the use of the article. There accompanies the record a report from the confidential agent of the Treasury Department containing statements given by the exporters, which, together with the testimony in this record, makes it perfectly plain to us that this merchandise consists of ramie rovings or slivers which were bundled up, packed, and shipped to this country. It appears from the testimony and an examination of the sample that it unquestionably was imported for the purpose of being used as a roving or sliver in the manufacture of woven fabrics, and that it is perfectly suitable for that use. It is true that some little manipulation might be necessary to take it out of its present condition, the same having been mixed, and put it into proper shape for use, but it seems that the labor necessary to that end would be much less expensive than the difference in duties were it to be held a waste. An implied admission runs all through the testimony that if the same merchandise were not mixed up it undoubtedly would be ramie sliver. We are unable to concur in the contention that the way the goods are packed can change their dutiable character.

We find from an examination of the record that the merchandise consists of ramie rovings or sliver.

This subject was fully considered in G. A. 5822 (T. D. 25710), wherein it was held that ramie sliver was properly dutiable at the rate of 45 per cent ad valorem, by similitude, under the provisions of paragraph 302 of said act, which, in so far as pertinent, reads:

302. * * * Cotton * * * sliver or roving, forty-five per centum ad valorem.

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That decision of the Board was appealed and affirmed by the United States circuit court for the southern district of New York without opinion. See T. D. 26462 (suit 3737).

Accordingly we hold that the merchandise is properly dutiable at the rate of 45 per cent ad valorem under the provisions of paragraph 302 by similitude to cotton sliver or roving. The protest is overruled.

(T. D. 28177—G. A. 6596.)

Japanese vegetables.

Certain lotus roots and other vegetable substances, cut into slices and dried, and so-called "kampio," produced by cutting the skin from a gourd into long strips and drying it, are dutiable as vegetables in their natural state, under paragraph 257, tariff act of 1897, and not as vegetables prepared or preserved under paragraph 241.

HAY, *G. A.*, dissents.

United States General Appraisers, New York, May 21, 1907.

In the matter of protests 219370, etc., of Domoto & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The merchandise consists of several Japanese edible vegetable substances known as kampio, hoshi renkon, and gobo. They were assessed for duty at 40 per cent ad valorem as prepared or preserved vegetables, under paragraph 241 of the tariff act of 1897, and are claimed to be dutiable as vegetables in their natural state, at 25 per cent ad valorem, under paragraph 257.

Kampio, or dried gourd, and hoshi renkon, or dried lotus root, were passed upon in Board decision *In re* Tanaka, G. A. 6267 (T. D. 27020), and held to be dutiable under said paragraph 241. It was shown in that case that kampio is produced by applying a small plane to the skin of a gourd and cutting it off in long strips and then drying it, and that the hoshi renkon was lotus root cut into small slices and dried. Such manipulation was regarded by the Board as removing the substances from the class of vegetables in their natural state as described in paragraph 257. Since the decision cited, however, the circuit court of appeals for the second circuit in Zanmati *v.* United States (T. D. 28054) has held that mushrooms cleaned, sliced, and dried in the sun are not by such preparation advanced beyond the condition of vegetables in their natural state. This ruling seems to require that the Board overrule its decision in G. A. 6267 and hold the products in question here to be dutiable under said paragraph 257. According to the testimony gobo is a sliced and dried vegetable and its dutiable status would be the same as that of the kampio and lotus root.

Upon the authority of the Zanmati case, the protests are sustained and the collector's decision reversed.

HAY, *General Appraiser*, dissents.

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(T. D. 28178—G: A. 6597.)

Gauge of whisky in bonded warehouse.

1. Imported whisky which has been entered in bond for warehouse is properly assessable for duty under paragraph 289, tariff act of 1897, on the quantity of the whisky as ascertained at the time of entry in bond, and not upon the quantity as shown by the gauge of the whisky at the time of the withdrawal from bond.—Following *In re* Godley, G. A. 6049 (T. D. 26384), and decision of the circuit court of appeals in the case of Louisville Public Warehouse Company *v.* Surveyor (49 Fed. Rep., 561; 1 C. C. A., 371).

2. Any such abatement of duties is prohibited by section 2983, Revised Statutes of the United States, which was not repealed by section 20, customs administrative act, June 10, 1890, as amended by the act of December 15, 1902 (32 Stat. L., Pt. I, p. 753).—United States *v.* Falk (204 U. S., 143; 27 Sup. Ct. Rep., 191; T. D. 27832).

United States General Appraisers, New York, May 21, 1907.

In the matter of protests 12745, etc., of Philip Godley *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The protests contained in the schedule relate to certain importations of whisky which were entered in bond and assessed for duty by the collector of customs at appropriate rates under the tariff act of 1897. This assessment was made upon the basis of the gauge as ascertained by the United States gauger at the time of entry of the whisky. On subsequent withdrawal of the liquor from warehouse it was claimed that a certain loss had resulted either from evaporation or other cause, and that duty should have been assessed only upon the gauge at the time of withdrawal. The protests claim that under the law, and particularly under section 20 of the customs administrative act of June 10, 1890, as amended by the act of Congress approved December 15, 1902 (32 Stat., 753), only such duties and charges are payable or assessable to which the merchandise was subject at the time of withdrawal for consumption from bonded warehouse. It was further contended that the collector should regauge the whisky at the time of withdrawal and that duty should be levied only on the gauge at the time of withdrawal. In some of the protests it is stated that the difference in the gauge between the time of entry and the time of withdrawal resulted from evaporation of moisture while in warehouse.

The construction of section 33 of the tariff act of 1897, and of said section 20 of the customs administrative act of 1890, amended as above cited, contended for by the importers, was sustained by the circuit court of appeals in the case of Falk *v.* United States (146 Fed. Rep., 484; T. D. 27036), and of Mosle *v.* Bidwell (130 Fed. Rep., 334; T. D. 25276). But on appeal being taken to the United States Supreme Court the decision of the circuit court of appeals was reversed, and the court sustained the ruling of the Board as made in

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In re Schmid, G. A. 4214 (T. D. 19715). It was observed by that court that under section 33 of the tariff act of 1897 warehoused merchandise dutiable by weight should be assessed on its weight at the time of entry and not at the time of withdrawal from warehouse. United States *v.* Falk (204 U. S., 143; 27 Sup. Ct. Rep., 191; T. D. 27832). That decision, however, can have no application to the present protests, for the reason that whisky is not made dutiable by weight but by gauge, and it is expressly provided by section 2983 of the Revised Statutes still in force, as follows:

In no case shall there be any abatement of the duties or allowance for any injury, damage, deterioration, loss, or leakage sustained by any merchandise while deposited in any public or private bonded warehouse.

The conclusion which we have reached, as above stated, is sustained in *In re* Godley, G. A. 6049 (T. D. 26384), and by the decision of the circuit court of appeals in the case of Louisville Public Warehouse Company *v.* Surveyor (49 Fed. Rep., 561; 1 C. C. A., 371). We hold accordingly that no allowance can legally be made for the leakage or evaporation of the whisky while in bonded warehouse.

The protests are overruled and the decision of the collector affirmed in each case.

(T. D. 28179—G. A. 6598.)

Painted fire screens.

Fire screens composed of bamboo frames tied together with silk strings, the frames inclosing hand-painted panels, all of which is admittedly composed in chief value of cotton, *Held* to be properly dutiable at the rate of 45 per cent ad valorem as manufactures of cotton under paragraph 322, tariff act of 1897.

United States General Appraisers, New York, May 21, 1907.

In the matter of protests 205712 of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* This merchandise consists of certain screens. They were assessed for duty at the rate of 60 per cent ad valorem under the provisions of paragraph 339, tariff act of 1897, as appliquéed articles. They are claimed to be dutiable as paintings at the rate of 20 per cent ad valorem under paragraph 454 of said act, which reads:

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, not specially provided for in this Act, twenty per centum ad valorem; but the term "statuary" as used in this Act shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

Or at 35 per cent ad valorem as manufactures of wood under paragraph 208 of said act, which reads:

House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this Act, thirty-five per centum ad valorem.

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Or as manufactures of cotton or flax under the provisions of paragraph 322 or 347, which paragraphs, respectively, read:

All manufactures of cotton not specially provided for in this Act, forty-five per centum ad valorem.

All manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this Act, forty-five per centum ad valorem.

At the hearing all the witnesses for the importer testified that cotton predominated in value in the articles. It further appears from the record that the articles are fire screehs composed of bamboo frames, tied together with silk cords, all of which surround cotton panels said to be hand painted. The painting is done in some places apparently with a brush, and in other places the ornamentation is admittedly done by means of drawings or outlines of glue over which metallic powder is sprinkled. They are cheap, crudely produced articles.

We think that all issues involved in this case were in substance decided in the case of Woolworth *v.* United States (T. D. 27853), decided January 18, 1907, by the United States circuit court for the southern district of New York. The subject-matter of that case was splash mats. The court said:

The articles are not paintings, as claimed by the importers, even though pictures or landscapes appear thereon. The testimony shows that the outlines of the pictures are first stenciled and then painted by hand, but the mats or screens are articles of utility and the decorative or coloring feature is secondary.

Upon the authority of that decision we reach our conclusions herein. We find that the merchandise is in chief value of cotton. We hold it is properly dutiable, as claimed, at the rate of 45 per cent ad valorem under the provisions of paragraph 322 as a manufacture in chief value of cotton. This disposes of the contention that the goods are house furniture of wood.

The collector will be governed accordingly.

(T. D. 28180—G. A. 6599.)

Toys—Artificial Christmas trees.

Artificial Christmas trees designed and intended for the amusement of children in play are, irrespective of cost, dutiable as toys at the rate of 35 per cent ad valorem under paragraph 418, tariff act of 1897, and not at 50 per cent ad valorem under paragraph 425 of said act.

United States General Appraisers, New York, May 21, 1907.

In the matter of protest 234781 of Schwerdtmann Toy Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* This protest is directed against the assessment of duty at the rate of 50 per cent ad valorem under

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paragraph 425 upon artificial Christmas trees of various sizes, which the importers claim to be toys, and therefore dutiable at 35 per cent ad valorem under paragraph 418 of the tariff act of 1897.

The official sample is approximately 3 feet in height and is composed of a cylindrical wooden base 6 inches high by 4 in diameter, painted white and decorated with a floral design applied by transfer. In the top of the base a stick wrapped with brown paper and constituting the trunk of the artificial tree is inserted. The branches are composed of iron wire and the foliage is represented by a close wrapping of grass blades, dyed a brilliant green. A small ball colored vermilion in imitation of a holly berry is affixed to the end of each branch, and about a dozen tin sockets intended to receive small wax candles are attached to various branches.

The appraiser lays stress on the fact that one of the trees in question is valued at 45 marks. We do not, however, regard as controlling the cost or size of an article which is identical in character with a class of goods known in trade as toys, the children of affluent parents being often indulged with playthings as to which the item of cost is not a consideration.

The testimony taken in this case shows, and we find as a fact, that these articles (which are valued at from 6 marks per gross to 12 marks each, with the single exception of one costing 45 marks, the cheaper kinds being largely in the majority) are designed and intended for the use of children in play, and that while any of these trees might be used in exceptional cases for purposes of decoration, such use would not be general nor would it operate to exclude the articles from the descriptive scope of the general term "toys."

Based upon the testimony and on our finding, we hold the merchandise to be toys and sustain the protest claiming 35 per cent ad valorem duty thereon under paragraph 418, the surveyor's decision being reversed.

(T. D. 28181.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15404.—VEGETABLE—WAH SAN—DRUG.—Protest 230442 of Hing Lum Chan against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 13, 1907.

So-called wah san, classified as a drug advanced in value, under paragraph 20, tariff act of 1897, was claimed to be free of duty under paragraph 548 as a crude drug, or under paragraph 617 as a crude vegetable substance.

LUNT. *General Appraiser:* * * * It appears that the article in question is a root varying in lengths and grown only in certain parts of China. It was testified that the root is dug from the ground; the bark or skin is then peeled off and the root

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allowed to dry in the sun. It is thus imported, and is used among the Chinese as a vegetable in soups. It is therefore not a drug within the terms of paragraphs 20 and 548, as these paragraphs limit the merchandise to nonedible drugs; and neither the claim nor the assessment can be upheld.

The claim under paragraph 617 is untenable for the reason that the court has held in Dodge *v.* United States (84 Fed. Rep., 449) that "vegetable substances, crude or unmanufactured, should be restricted to such vegetable substances as are *ejusdem generis* with the substance specifically enumerated in this paragraph." The question, then, resolves itself into a mere determination of the paragraph of the present tariff act under which the merchandise is dutiable. It is clearly a vegetable, and in Zanmati *v.* United States (T. D. 28054) the court held that the slicing, cleaning, and drying in the sun of a vegetable does not remove it out of the category of "vegetables in their natural state." Applying the reasoning to the case at bar, we find the merchandise to be a vegetable in its natural state and hold it dutiable under paragraph 257 at 25 per cent ad valorem. The protest is overruled without affirming the decision of the collector.

No. 15405.—CONFETTI—MANUFACTURES OF PAPER.—Protest 219860 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 13, 1907. Opinion by Fischer, G. A.

The Board held confetti to have been properly classified as manufactures of paper under paragraph 407, tariff act of 1897. Assessment affirmed on the authority of G. A. 6260 (T. D. 26992).

No. 15406.—BOOKS PARTLY IN ENGLISH.—Protest 223838 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 13, 1907. Opinion by Fischer, G. A.

Books containing several pages of English text were held not to be free of duty under paragraph 502, tariff act of 1897, relating to books printed exclusively in a language other than English.

No. 15407.—POST CARDS ORNAMENTED WITH FEATHERS.—Protest 247195 of Max Grossmann against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 13, 1907.

Pictorial post cards ornamented with feathers, which were classified under paragraph 425, tariff act of 1897, relating to manufactured feathers, were claimed to be dutiable under paragraph 403 as printed matter, or paragraph 400 as lithographic prints. Protest overruled.

FISCHER, *General Appraiser:* * * * No evidence was offered by the importer, the case having been submitted for decision on the record and some samples. An examination of these shows that the cards are printed by a process which is not lithographic nor in which lithography is employed. They are printed by a gelatin process, are colored by hand, and ornamented with feathers which have been dyed or colored. In post cards of this kind manufactured feathers is the component material of chief value, and by invoking the provision in section 7, which is applicable, we find that these feathered cards are dutiable as assessed.

No. 15408.—MANUFACTURES OF CHIP.—Protests 125500, etc., of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907. Opinion by Howell, G. A.

Protest 125502 was sustained as to braids and trimmings, which were held dutiable as manufactures in chief value of chip under paragraph 449, tariff act of 1897. In all other respects the protests were overruled.

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No. 15409.—ETAMINES—COTTON ARTICLES.—Protest 126128 of H. Robinson against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907. Opinion by De Vries; G. A.

Goods classified as etamines under paragraph 339, tariff act of 1897, and as manufactures of cotton under paragraph 322, were held subject to the provisions for cotton cloth in Schedule I of said act, as claimed by the importer. Note G. A. 5691 (T. D. 25333), G. A. 5790 (T. D. 25580), and G. A. 5928 (T. D. 26062).

No. 15410.—BLEACHED COTTONS.—Protest 202425 of McGibbon & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907. Opinion by De Vries, G. A.

Protest overruled on the authority of G. A. 5795 (T. D. 25599), relating to bleached cottons.

No. 15411.—COTTON CLOTH—WARP THREADS IN PAIRS.—Protests 229801, etc., of Mills & Gibb against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907.

The question before the Board was whether cotton cloth contained over 50 threads per square inch, as classified, or under, as claimed by the importers. Assessment affirmed.

DE VRIES, *General Appraiser:* * * * The warp threads of the cloth in question are arranged in pairs. One of each pair goes over the first filling thread and the other under it, their positions with regard to the next filling thread being reversed, and so on throughout the fabric. In this manner each pair of warp threads is held together and appears at first glance to be one twisted thread.

The importers claim each pair of these threads should be counted as one, which would make the count of the fabric under 50 threads per square inch. A close examination of the samples introduced at the hearing shows that each one of the pairs is a distinct thread entirely independent, and they must be so considered in determining the count of threads, G. A. 4507 (T. D. 21455). We find the cloth counts between 50 and 100 threads per square inch.

No. 15412.—STATUARY FOR ATHLETIC CLUB.—Protest 217800 of Multnomah Amateur Athletic Club against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 3, May 13, 1907.

A bronze figure said to have been imported for an athletic club was claimed to be free of duty under paragraph 649 or paragraph 638, tariff act of 1897. Protest overruled.

WAITE, *General Appraiser:* * * * There has been filed in the case what purports to be a copy of the articles of incorporation of the Multnomah Amateur Athletic Club, and from a perusal of this the Board concludes that the principal objects of the institution are those naturally suggested by its name, to wit, the encouragement of indoor and outdoor athletics and field sports and social intercourse among its members and the maintenance of a clubhouse, gymnasiums, boathouses, grounds, etc., for these purposes. Such an institution is not one "incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts," within the meaning of paragraph 649, which we conceive to be the one relied upon.

No. 15413.—STATUARY—COLUMNS FOR BUSTS.—Protest 219604-22488 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 13, 1907.

The importers contend that certain marble columns accompanying an importation of busts should have been given the same classification as the busts—that is, as statuary—under the reciprocal commercial agreement with Italy.

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WAITE, *General Appraiser:* * * * Reporting upon the case, the appraiser states:

These columns, it will be noted, are three to five times the value of the busts; are packed separately, and are not the ordinary bases which usually accompany these Italian busts. The ordinary base is usually included in the value of the bust and is just as necessary to support the bust upon the top of a large, expensive column as it would be to support it upon a table or mantel.

The Board holds the columns to have been properly assessed upon the same grounds which controlled in Abstract 9303 (T. D. 26902) and Abstract 12959 (T. D. 27636).

No. 15414.—IRIS ROOTS.—Protest 221677-22745 of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 13, 1907.

The merchandise, which was classified as nursery stock under paragraph 252, tariff act of 1897, was claimed to be free of duty under paragraph 656 as bulbs and bulbous roots not edible and not otherwise provided for. Protest overruled.

WAITE, *General Appraiser:* The goods are invoiced as 10,000 dry orris roots, and were returned by the appraiser as live iris plants. * * * In a supplemental report the appraiser states that the merchandise "was found upon examination to be roots of the Florentine iris which had germinated and produced sprouts from 6 to 10 inches in length;" and he further states, "the original invoice description of these roots or plants seems to have been erroneous, as they could not be dry orris roots and have germinated in transit."

The importers have not seen fit to introduce any evidence. While the Florentine iris is one of the varieties of iris-yielding orris root ("Iris," International Encyclopædia), the Board can not find upon the record before it that the importation is commercial orris root; neither can it say that the roots in question are not bulbs or bulbous roots, cultivated for their flowers, and dutiable as assessed, or at least at the same rate under the provision in paragraph 251 of the act for "bulbs, bulbous roots, or corms which are cultivated for their flowers."

No. 15415.—ABANDONMENT.—Protest 227615 of L. J. Clayburgh & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 13, 1907. Opinion by Waite, G. A.

The importers contended that they should be permitted to abandon, under section 23 of the customs administrative act of 1890, a package of goods imported by parcels post, and to be relieved from the payment of duties on the ground that the goods were of no commercial value; also that they were not assessable, in any event, by reason of the absence of value. The Board held that it does not appear that the goods were damaged, and that the right to abandon importations under said section accrues only where there is damage. United States *v.* One Case of Paintings (99 Fed. Rep., 426). The contention that the goods are of no commercial value was overruled on the authority of G. A. 4467 (T. D. 21327).

No. 15416.—PRESERVED ROSE LEAVES—SWEETMEATS.—Protest 230218-23420 of American Shipping Company against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 13, 1907. Opinion by Waite, G. A.

The protest related to rose leaves preserved in a thick sweet sirup in small tins in the usual shape in which found in confectioners' shops. The Board affirmed the action of the collector in classifying the goods as sweetmeats under paragraph 263, tariff act of 1897.

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No. 15417.—AFFIDAVIT—ADMISSIBILITY.—Protest 230283 of Flora Haddix against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 13, 1907.

HAY, *General Appraiser:* * * * An affidavit was submitted at the hearing which is objected to by the representative of the Government on the ground that some of the matter is hearsay. The affidavit in question does not attain the dignity of evidence, and the case must be treated as submitted without proof of the allegation of the importer. The protest is therefore overruled.

SOMERVILLE, *General Appraiser*, concurring: I concur in the conclusion that the affidavit filed in this case is not sufficient to sustain any one of the claims made in the protest. I refer, however, to Board decision in the case of Wakem & McLaughlin, G. A. 5433 (T. D. 24703), and the decision of the circuit court of appeals in the case of United States *v.* Downing (146 Fed. Rep., 56; T. D. 27025), for illustrations of the circumstances under which affidavits are usually admissible and the weight to be attached to them.

No. 15418.—AFFIDAVIT—ADMISSIBILITY.—Protest 232268 of E. D. Brooks against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 15417 (*supra*).

No. 15419.—DECORATED EARTHENWARE.—Protest 234779 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, May 13, 1907. Opinion by Hay, G. A.

The merchandise was held to have been properly classified under paragraph 95, tariff act of 1897, as decorated earthenware.

No. 15420.—PROTEST ABANDONED.—Protest 180658 of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907. Opinion by Howell, G. A.

Protest abandoned; overruled.

No. 15421.—PROTESTS UNSUPPORTED.—Protests 236972, etc., of Hensel, Bruckmann & Lorbacher *et al.*, protests 242190, etc., of Naday & Fleischer *et al.*, and protest 243942 of L. Wertheimber against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 13, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 15422.—PROTESTS UNSUPPORTED.—Protest 243401 of Travis & Parks and protest 236973 of Hensel, Bruckmann & Lorbacher. Opinions by Fischer, G. A.

Same as No. 15421 (*supra*).

No. 15423.—PROTEST UNSUPPORTED.—Protest 226883 of McGibbon & Co. Opinion by De Vries, G. A.

Same as No. 15421 (*supra*).

No. 15424.—IMITATION PRECIOUS STONES.—Protest 231662 of Carl Blatt against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14, 1907. Opinion by Sharretts, G. A.

The goods were held to have been properly classified under paragraph 435, tariff act of 1897, as imitation precious stones.

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No. 15425.—ORNAMENTED GLASSWARE IN CHIEF VALUE OF METAL.—Protest 242881 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14, 1907. Opinion by Sharretts, G. A.

The protest related to glass bottles ornamented with silver scroll work, silver being the component of chief value. On the authority of Gallenkamp *v.* Rachman (147 Fed. Rep., 769; T. D. 27090), the Board held these articles to have been properly classified under paragraph 100, tariff act of 1897, relating to decorated glass bottles.

No. 15426.—JEWELRY.—Protest 244133 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14. 1907. Opinion by Sharretts, G. A.

Brooches and bracelets set with imitation precious stones were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15427.—REFINED SULPHUR.—Protest 216233 of Meyer Brothers Drug Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14, 1907. Opinion by McClelland, G. A.

So-called roll sulphur was held to have been properly classified under paragraph 84, tariff act of 1897, relating to refined sulphur. G. A. 6393 (T. D. 27456) noted.

No. 15428.—BLUE CONTAINING FERROCYANIDE.—Protests 222296, etc., of Sucrs. de L. Villamil & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan. Before Board 1, May 14, 1907. Opinion by McClelland, G. A.

The article in controversy, which was shown by chemical analysis to consist of blue containing ferrocyanide of iron mixed with a large proportion of white pigment, chiefly barium sulfate, was classified under paragraph 45, tariff act of 1897, relating to blues containing ferrocyanide of iron, against the importers' contention that it was dutiable under paragraph 52 as wash blue. Assessment affirmed.

No. 15429.—PINCUSHIONS—ARTIFICIAL FRUITS.—Protests 223858, etc., of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14, 1907. Opinions by McClelland, G. A.

Pincushions representing artificial fruits, leaves, and flowers were held to have been properly classified under paragraph 425, tariff act of 1897, relating to artificial fruits, etc.

No. 15430.—BASKETS.—Protest 231683 of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 14, 1907. Opinion by McClelland, G. A.

Baskets classified as composed in chief value of wood were claimed to be composed in chief value of straw under paragraph 449, tariff act of 1897. This contention was sustained as to one item.

No. 15431.—ARROWROOT STARCH.—Protest 89080*f* of Robert Crooks & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 14, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of Middleton *v.* United States (151 Fed. Rep., 16; T. D. 27749), relating to arrowroot starch.

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No. 15432.—Olives in Kegs.—Protests 227436, etc., of Sucrs. de L. Villamil & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, May 14, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Lomba *v.* United States (T. D. 27707), relating to olives in kegs.

No. 15433.—Protest Unsupported.—Protest 243892 of C. B. Rouss against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 14, 1907. Opinion by Howell, G. A.

Protest overruled for want of merit.

No. 15434.—Protest Unsupported.—Protest 244992 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by Fischer, G. A.

Same as No. 15433 (*supra*).

No. 15435.—Protest Unsupported.—Protest 167295 of Moquin Restaurant and Wine Company. Before Board 3. Opinion by Waite, G. A.

Same as No. 15433 (*supra*).

No. 15436.—Bead Bracelets—Pins With Decorated Earthenware Heads.—Protest 244134 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

The articles in controversy, which consisted of bracelets composed of glass beads less than 1 inch in dimensions and of hat pins with decorated earthenware heads, were held to have been properly assessed with duty at the rate of 60 per cent ad valorem.

No. 15437.—Glass Shades—Electric-Light Sockets.—Protest 231680 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 16, 1907.

Sharretts, *General Appraiser:* The merchandise covered by this protest consists of—

1. Two varieties of shades for incandescent electric-light bulbs—one a cluster of artificial grapes surrounded by vine leaves, composed of cotton and glass, glass chief value, and the other a group of artificial flowers composed of cotton, not paper as claimed, and representing lilies of the valley, small roses, and iris petals. By means of a spring clasp at the top of each of the two descriptions of shades, it is caused to open longitudinally and encircle the socket in which the bulb is screwed.

2. Cotton candle shades, ornamented with metal spangles and festoons of silk ribbon one-eighth of an inch in width and lined with paper, cotton the component material of chief value.

3. Small imitation bronze figures on bases, each base containing a socket for a small incandescent electric light, to which short wires have been attached. The completed articles weigh about 1 pound each and are not statuary.

Duty was assessed on the above at the rate of 50 per cent, 60 per cent, and 45 per cent ad valorem under paragraphs 425, 390, and 198 of the present tariff act, respectively, the importers making numerous claims for duty at rates lower than those assessed.

With regard to the electric lamp shades invoiced as Nos 3100–104, we sustain the claim in the protest that they are dutiable at 45 per cent ad valorem under paragraph 112. As to all other goods and in all other respects, the surveyor's decision is affirmed.

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No. 15438.—Coral Pieces.—Protest 248911 of L. Heller & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Pieces of coral in cabochon style were held dutiable under paragraph 435, tariff act of 1897, as precious stones cut, as claimed by the importers. G. A. 6482 (T. D. 27726), followed.

No. 15439.—Jewelry—Crosses.—Protest 244126 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Gold-plated crosses were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15440.—Ornaments—Pins.—Protests 47769*f*, etc., of Bloomingdale Brothers *et al.* and protests 55785*f*, etc., of Bloomingdale Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinions by Sharretts, G. A.

Protests sustained in part, the following articles being held dutiable as manufactures of the component material of chief value, as claimed by the importers: Belt buckles and other ornaments composed of base metal and paste; base metal fan chains and hat pins with plain imitation pearl heads. Note Abstract 5635 (T. D. 26248), G. A. 6130 (T. D. 26653), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390).

No. 15441.—Hat Pins.—Protests 231671, etc., of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Hat pins with ornamental heads similar to those included in class 1 of G. A. 6139 (T. D. 26679), and hat pins with decorated earthenware heads, were held to have been properly classified under paragraphs 434 and 96, respectively, tariff act of 1897, as jewelry and decorated earthenware.

No. 15442.—Hat Pins With Dice Heads.—Protest 230646 of Morimura Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Hat pins with bone heads in imitation of dice, which were classified as jewelry, were held dutiable as manufactures of bone under paragraph 450, tariff act of 1897, as claimed by the importers.

No. 15443.—Hat Pins.—Protest 237008 of Weiller & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6376 (T. D. 27390), relating to hat pins.

No. 15444.—Celluloid Pins.—Protest 248735 of A. & H. Veith against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Pins with celluloid heads classified as jewelry were held dutiable as celluloid articles under paragraph 17, tariff act of 1897, as claimed by the importers. The Board found the net weight of the goods to be 2 pounds per gross.

No. 15445.—Glue Stock.—Protests 199644, etc., of H. A. Chapal Frères & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of Abstract 13807 (T. D. 27785), relating to glue stock.

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No. 15446.—MILL BUTTINGS.—Protest 226712 of F. W. Myers & Co. against the assessment of duty by the collector of customs at the port of Plattsburg. Before Board 1, May 16, 1907. Opinion by McClelland, G. A.

Protest sustained on the authority of G. A. 6578 (T. D. 28070), relating to mill buttings.

No. 15447.—PINE PLANKING.—Protests 242312, etc., of B. R. Lawrence against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 1, May 16, 1907. Opinion by McClelland, G. A.

The merchandise, which was invoiced as ship planking and was returned by the appraiser as pine planking, was classified under paragraph 195, tariff act of 1897, relating to sawed lumber, against the importer's contention that it was free of duty under paragraph 699 as ship planking. Protests overruled. G. A. 6434 (T. D. 27589) noted.

No. 15448.—WOOD BASKETS.—Protest 244516–24283 of Mandel Brothers against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 16, 1907. Opinion by McClelland, G. A.

Baskets classified as manufactures of wood were claimed to be composed in chief value of chip. Assessment affirmed.

No. 15449.—DRAWNWORK.—Protest 223147 of Neuss, Hesslein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 16, 1907. Opinion by Fischer, G. A.

Drawnwork classified as imitation lace under paragraph 339, tariff act of 1897, was held dutiable under paragraph 346 as flax articles, as claimed by the importers.

No. 15450.—AUTOCHROME POST CARDS.—Protest 237621 of Meffert & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 16, 1907. Opinion by Fischer, G. A.

Protest sustained on the authority of G. A. 6369 (T. D. 27359), relating to autochrome post cards.

No. 15451.—STEEL POINTS.—Protests 242537, etc., of Bailey, Green & Elger against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 16, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 14968 (T. D. 28074), relating to steel points.

No. 15452.—COTTON TAPES.—Protests 5155*h*, etc., of Samstag & Hilder Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 16, 1907. Opinion by Howell, G. A.

Protests sustained as to portions of the goods on the authority of G. A. 6278 (T. D. 27060), relating to cotton tapes.

No. 15453.—FEATHERSTITCH BRAIDS.—Protests 223840, etc., of Rice-Stix Dry Goods Company *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 16, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 15454.—PROTESTS AGAINST RELIQUIDATION.—Protests 156691, etc., of P. K. Wilson & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 16, 1907. Opinion by De Vries, G. A.

Assessment affirmed on the authority of Abstract 15179 (T. D. 28104), relating to protests against reliquidation.

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No. 15455.—Flax Fabrics.—Protest 232100 of W. Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 16, 1907. Opinion by De Vries, G. A.

The importers contended that fabrics classified as composed in chief value of flax were dutiable as cotton cloth. Protest overruled. Note G. A. 5018 (T. D. 23348) and G. A. 5447 (T. D. 24725).

No. 15456.—Bagging in Pieces.—Protest 248611 of Hawley & Letzerich against the assessment of duty by the collector of customs at the port of Galveston. Before Board 2, May 16, 1907. Opinion by De Vries, G. A.

Cotton bagging cut into pieces, which was classified under paragraph 341, tariff act of 1897, relating to jute fabrics, was claimed to be dutiable under paragraph 344 as bagging for cotton. The collector rejected this claim on the ground that, being cut into pieces, the goods were excluded from the latter paragraph. Protest sustained on the authority of G. A. 6431 (T. D. 27586).

No. 15457.—Arrowroot Starch.—Protest 71600*f* of Kwong Tai Chong. May 16, 1907.

Same as No. 15431 (*supra*).

No. 15458.—Soy Sauce.—Protests 240620-24142, etc., of Hip, Lung & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 16, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Abstract 12671 (T. D. 27591), Abstract 13636 (T. D. 27745), and G. A. 6550 (T. D. 27944), relating to soy sauce.

No. 15459.—Toy Fans.—Protest 233319 of F. W. Woolworth & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 16, 1907. Opinion by Hay, G. A.

Dolls' fans were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 15460.—Soapstone Figures—Decorated Mineral.—Protest 210569 of Chow Chee Sen against the assessment of duty by the collector of customs at the port of St. Paul. Before Board 3, May 16, 1907. Opinion by Hay, G. A.

The importer objected to the classification of carved soapstone figures under paragraph 97, tariff act of 1897, relating to articles composed of earthy or mineral substances decorated. Assessment affirmed.

No. 15461.—Protests Abandoned.—Protests 199645, etc., of H. & A. Chapal Frères & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by McClelland, G. A.

Protest abandoned; overruled.

No. 15462.—Protest Abandoned.—Protest 217720 of H. J. Carson against the assessment of duty by the collector of customs at the port of Buffalo.

Same as No. 15461 (*supra*).

No. 15463.—Protest Abandoned.—Protest 248736 of A. & H. Veith. Opinion by Sharretts, G. A.

Same as No. 15461 (*supra*).

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No. 15464.—PROTESTS ABANDONED.—Protests 231059, etc., of J. W. Hampton, Jr., & Co. and protests 3021 *h*, etc., of Mills & Gibb. Before Board 2. Opinions by Howell, G. A.

Same as No. 15461 (*supra*).

No. 15465.—PROTEST UNSUPPORTED.—Protest 226511 of Morimura Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 16, 1907. Opinion by Sharretts, G. A.

Protest overruled for want of merit.

No. 15466.—PROTEST UNSUPPORTED.—Protest 226576 of A. W. Tedcastle against the assessment of duty by the collector of customs at the port of Boston. Opinion by McClelland, G. A.

Same as No. 15465 (*supra*).

No. 15467.—PROTEST UNSUPPORTED.—Protest 222064 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by McClelland, G. A.

Same as No. 15465 (*supra*).

No. 15468.—PROTESTS UNSUPPORTED.—Protests 215746, etc., of A. & H. Veith *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 15465 (*supra*).

No. 15469.—PROTEST UNSUPPORTED.—Protest 242893 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2. Opinion by Fischer, G. A.

Same as No. 15465 (*supra*).

No. 15470.—PROTEST UNSUPPORTED.—Protest 231146 of Stengel & Rothschild. Before Board 3. Opinion by Hay, G. A.

Same as No. 15465 (*supra*).

No. 15471.—PROTESTS UNSUPPORTED.—Protest 232054 of Downing, Judae & Co., protests 244504, etc., of Butler Brothers, and protest 244514 of K. Hitomi against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3. Opinions by Hay, G. A.

Same as No. 15465 (*supra*).

No. 15472.—MAGNESIUM CARBONATE, TECHNICAL.—Protest 247244 of Meyer Brothers Drug Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 17, 1907. Opinion by Lunt, G. A.

So-called magnesium carbonate light, classified under paragraph 31, tariff act of 1897, as carbonate of magnesium, calcined and medicinal, was claimed to be dutiable under paragraph 3 as a chemical compound. The Board found the article to be carbonate of magnesium, technical but not medicinal, and sustained the protest.

No. 15473.—WOOL WADDING.—Protest 242882 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 17, 1907. Opinion by Lunt, G. A.

The protest related to wadding, which the Board found had been properly classified under paragraph 366, tariff act of 1897, relating to manufactures of wool.

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No. 15474.—SPANGLED ARTICLES.—Protest 109582 of H. B. Claflin Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 17, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6323 (T. D. 27240), relating to spangled articles.

No. 15475.—BEADED CHAINS.—Protests 17046 *h*, etc., of B. Altman & Co. against the assessment of duty by the collector of customs at the port of New York Before Board 1, May 17, 1907. Opinion by Sharretts, G. A.

The importers contended that beaded chains were dutiable as manufactures of the component of chief value. The protests were overruled, the Board holding the articles dutiable at 60 per cent, as classified, either as jewelry or as beaded articles.

No. 15476.—ORNAMENTS.—Protests 28444*f*, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 17, 1907. Opinion by Sharretts, G. A.

A portion of the goods (ornaments) was held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6374 (T. D. 27382) followed.

No. 15477.—SPANGLED ARTICLES—BEADED ARTICLES—JEWELRY—EMBROIDERED WEARING APPAREL.—Protest 234786 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 17, 1907. Opinion by Sharretts, G. A.

The following articles were held to have been properly assessed at the rate of 60 per cent ad valorem: Silk spangled and beaded bags; brooches and pendants (jewelry); embroidered wearing apparel. G. A. 6578 (T. D. 28103) noted.

No. 15478.—COLORED LAMPS—DECORATED GLASSWARE.—Protests 218425, etc., of Cowen-Heineberg Company against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 1, May 17, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6419 (T. D. 27559) the Board held colored lamps to have been properly classified as decorated glassware under paragraph 100, tariff act of 1897.

No. 15479.—GRANITE MONUMENTS.—Protests 240604, etc., of L. M. Elwell against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, May 17, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of G. A. 6026 (T. D. 26334), relating to granite monuments.

No. 15480.—GLOVES.—Protests 223845, etc., of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 17, 1907. Opinion by McClelland, G. A.

The Board held the goods to have been properly classified as ladies' schmaschen gloves, under 14 inches, embroidered.

No. 15481.—HANDMADE TRANSFER PAPER.—Protests 187922, etc., of George Meier & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 17, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6581 (T. D. 28128), relating to handmade transfer paper.

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No. 15482.—Silk Fabrics.—Protest 230498 of Johnson & Faulkner against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 17, 1907. Opinion by Howell, G. A.

Silk fabrics classified under paragraph 387, tariff act of 1897, as weighing less than 8 ounces per square yard, were found to be of a greater weight, and held dutiable as manufactures of silk under paragraph 391, as claimed by the importers.

No. 15483.—Etamines.—Protests 110901, etc., of A. J. Pullman against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 17, 1907. Opinion by De Vries, G. A.

As claimed by the importer, goods classified as etamines were held dutiable at the rates applicable to flax and cotton fabrics. Note G. A. 5790 (T. D. 25580).

No. 15484.—Soy.—Protests 215654, etc., of Komada & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 17, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Abstract 12761 (T. D. 27591), Abstract 13636 (T. D. 27745), and G. A. 6550 (T. D. 27944), relating to soy.

No. 15485.—Protest Filed Too Late.—Protest 243558 of Larini, Cavallaro & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 17, 1907. Opinion by Somerville, G. A.

The protest was dismissed because not filed within the time prescribed by law.

No. 15486.—Cherries in Maraschino.—Protest 229597 of R. U. Delapenha & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 17, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 6473 (T. D. 27690), relating to cherries in maraschino.

No. 15487.—Dutiable Weight of Tobacco.—Protests 143685, etc., of John F. Craig & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, May 17, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of tobacco entered for warehouse.

No. 15488.—Packed Packages—Fees.—Protests 228944, etc., of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 17, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of G. A. 6552 (T. D. 27962), relating to the exaction of fees in connection with the entry of packed packages.

No. 15489.—Pocket Cigar Lighters—Smokers' Articles.—Protest 242094–24146 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, May 17, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of Abstract 13785 (T. D. 27785), relating to pocket cigar lighters.

No. 15490.—Favored-Nation Clause.—Protest 229241 of Ernest C. Villere & De Blac against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, May 17, 1907. Opinion by Hay, G. A.

Protest overruled on the authority of G. A. 5670 (T. D. 25260), relating to the favored-nation clause in treaties.

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No. 15491.—REGALIA—VESTMENTS.—Protest 223639 of Sister M. Innocentia against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 17, 1907. Opinion by Hay, G. A.

Certain vestments worn by a priest during public services were held free of duty under paragraph 649, tariff act of 1897, as regalia.

No. 15492.—PROTESTS ABANDONED.—Protests 237036, etc., of Baum, Linz & Cohen *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 17, 1907. Opinion by Fischer, G. A.

Protests abandoned; overruled.

No. 15493.—PROTEST ABANDONED.—Protest 232103 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15492 (*supra*).

No. 15494.—PROTESTS ABANDONED.—Protests 247340, etc., of Continental Color and Chemical Company. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15492 (*supra*).

No. 15495.—PROTESTS UNSUPPORTED.—Protest 229622 of R. B. Henry & Sadler Company and protest 231265 of G. Westernacher against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 17, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 15496.—PROTEST UNSUPPORTED.—Protest 231277 of V. Cordero against the assessment of duty by the collector of customs at the port of Key West.

Same as No. 15495 (*supra*).

No. 15497.—PROTEST UNSUPPORTED.—Protest 223626 of Clara Joseph against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15495 (*supra*).

No. 15498.—PROTESTS UNSUPPORTED.—Protest 231670 of Rosenthal-Sloan Millinery Company and protest 223857 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15495 (*supra*).

No. 15499.—PROTEST UNSUPPORTED.—Protest 223532 of Douglas & Berry. Before Board 2. Opinion by De Vries, G. A.

Same as No. 15495 (*supra*).

No. 15500.—PROTESTS UNSUPPORTED.—Protests 229936, etc., of Peebles, Sackett & Crawford *et al.* Before Board 2. Opinion by Howell, G. A.

Same as No. 15495 (*supra*).

No. 15501.—PROTEST UNSUPPORTED.—Protest 247197 of Meyer Brothers Drug Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 17, 1907. Opinion by Lunt, G. A.

Protest overruled for want of merit.

No. 15502.—PROTEST UNSUPPORTED.—Protest 251483 of Asia Company against the assessment of duty by the collector of customs at the port of Los Angeles.

Same as No. 15501 (*supra*).

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TREASURY DEPARTMENT, *May 22, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 28182.)

Liability of consignee.

UNITED STATES *v.* MEXICAN INTERNATIONAL RAILROAD COMPANY (*a*).

U. S. Circuit Court of Appeals, Fifth Circuit. January 29, 1907. No. 1482.

1. RELIQUIDATION AFTER PAYMENT OF DUTY.

Under section 21, act of June 22, 1874 (18 Stat., 190), a collector of customs may, if before the expiration of one year from the time of entry, reliquidate at a higher rate, though the duties first assessed have been paid and the goods withdrawn for consumption.

2. RELIQUIDATION—FINALITY—ABSENCE OF PROTEST.

Under section 14, customs administrative act of 1890, when the importers fail to file with the collector of customs the notice of dissatisfaction (protest) required by said section, a reliquidation of duties becomes final and conclusive against them, and the question of the correctness of the reliquidation can not be considered in proceedings to collect the amount becoming due under the reliquidation.

3. LIABILITY OF CONSIGNEE—GOODS CONSIGNED TO RAILROAD AGENT.

Merchandise imported by railroad was consigned by one agent of the railroad company to another agent, and the latter made entry at the custom-house in his own name as consignee; each was the authorized agent of the company; and all parties concerned knew that they were acting for the company, though in some of their transactions they did not describe themselves as agents, but used their individual names. *Held* that the railroad company was the consignee of the merchandise and therefore, under section 1, customs administrative act of 1890, was liable for the payment of the duties, notwithstanding that the company was not the actual owner of the property.

IN ERROR to the district court of the United States for the western district of Texas.

[Decision in favor of the Government.]

This action was brought by the United States against the Mexican International Railroad Company, a corporation organized under the laws of Connecticut and operating a railroad in the Republic of Mexico and in the State of Texas, to recover $3,876.60, alleged to be due for duties on the importation of merchandise.

The petition shows that when the goods were first imported they were so classified and valued that the duties amounted to only $51.20, which was paid by F. A. Bonnet with funds of the railroad compay; that within twelve months there was a reliquidation, and the increased duties were assessed for which the suit was brought.

The answer of the defendant presented the defense (1) that the classification first made was correct, and that the duties as then assessed had been paid, and that the collector had no right, after such payment and the release of the goods, to make a reliquidation; and (2) that the railroad company was not the owner of the goods, and was not liable for the duties for which suit was brought.

The case was tried before a jury, and, after evidence had been offered by both parties, the court instructed the jury to return a verdict for the defendant company, and the United States sued out this writ of error, assigning that the trial court erred in directing the verdict.

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a Reported in 151 Federal Reporter, 545.

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A condensed statement of the facts as they appeared when the evidence was closed is necessary:

On June 10, 1901, the Mexican International Railroad Company duly constituted and appointed, by written power of attorney, Fritz A. Bonnet and J. N. Shafter its agents and attorneys, for it, and in its name, place and stead, to receive and enter at the custom-house at the port of Eagle Pass, in the collection district of Saluria, in the western district of Texas, any and all goods, wares, and merchandise thereafter imported by, or which might thereafter arrive consigned to, the Mexican International Railroad Company. Bonnet and Shafter were further authorized by the power of attorney to sign the name of the Mexican International Railroad Company, to seal and deliver any bonds required for securing the payment of duties and other charges on any and all such goods, wares, and merchandise, and generally to transact at the custom-house at the port of Eagle Pass any and all customs business in which the Mexican International Railroad Company might be concerned or interested.

On July 21, 1903, there was received at Gomez Palacios, Mexico, by the Mexican International Railroad Company, through its agent, George F. Jackson, for and to be delivered to F. A. Bonnet at Eagle Pass, Tex., a certain shipment, consisting, among other articles, of 19,636 pounds described in the bill of lading therefor as "waste."

On July 25, 1903, F. A. Bonnet signed a consular invoice for, among other things, the said 19,636 pounds of waste, wherein it was stated that the same was shipped by the Mexican International Railroad Company to the port of Eagle Pass, Tex., in railroad cars, and to be there entered at the custom-house consigned to J. N. Shafter, which invoice described the 19,636 pounds of waste as "all waste," and as dutiable at 10 per cent ad valorem under paragraph 463, tariff act of 1897.

Thereafter J. N. Shafter appeared before L. A. Martin, consul of the United States at Ciudad Porfirio Diaz, Mexico, and produced the invoice last before mentioned, signed by Bonnet before the said consul, and declared in writing, in presence of the consul, that entry of the said merchandise was to be made at the port of Eagle Pass, Tex., in the United States of America, the consul further making the customary certificate as to the identification of Shafter and as to the actual market value and wholesale price of the goods described in said invoice in the principal markets of the country at the time of exportation.

At the same time and date J. N. Shafter made the usual declaration on the invoice as follows:

I, J. N. Shafter, customs agent of the Mexican International Railroad Company, do solemnly and truly declare that I am the agent of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at Ciudad Porfirio Diaz, whence said merchandise is to be exported to the United States; that said invoice contains a true and full statement of the time when, the place where, and the person from whom the same was purchased, and the actual cost thereof, and all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as has been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to anyone; and that the currency in which said invoice is made out is that which was actually paid for said merchandise. And I further declare that it is intended to make entry of said merchandise at the port of Eagle Pass, Tex., in the United States of America. J. N. SHAFTER.

Ciudad Porfirio Diaz, Mexico, July 25, 1903.

Said consular invoice was indorsed on the back as follows:

102 Duplicate. (Purchased.) No. 215. Invoice of waste and cotton. To be entered at Eagle Pass, Tex. Name of shipper, Mexican International Railroad Company. Total amount of invoice, $1.404.28. Fee No. ——.

On July 25, 1903, F. A. Bonnet made entry at the United States custom-house at Eagle Pass, Tex., among other articles, of the said 19,636 pounds of waste, classifying the same as "all waste," dutiable at 10 per cent ad valorem, the amount of duties thereon, as stated in said entry, being $51.20.

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Thereafter, on the same day and as part of said entry and under oath, the same F. A. Bonnet made the usual declaration required by law for entries at the customhouse, wherein he declared in substance that he was the consignee of the merchandise, to wit, the 19,636 pounds of waste described in the said entry and invoice, etc. He further declared that to the best of his knowledge and belief J. R. C. Boyer, of Philadelphia, Pa., was the owner of the said merchandise, and that the invoice exhibited the market value at the time of exportation to the United States in the principal markets of the country from whence imported, etc.

On July 30, 1903, the said entry of the said 19,636 pounds of waste was, by the collector of customs at the port of Eagle Pass, liquidated as entered—that is to say, as of the dutiable value of $512, with a rate of duty of 10 per cent ad valorem, and an amount of duty due the United States of $51.20, which amount of duty on said liquidation as entered, namely, $51.20, was paid by the said F. A. Bonnet to the collector of customs at the port of Eagle Pass.

On March 5, 1904, the collector of customs at the port of Eagle Pass reliquidated the said entry of the said 19,636 pounds of waste, classifying the same as "wool waste," under paragraph 362 of the tariff act of 1897, and assessed the duties on the said shipment at the specific duty of 20 cents per pound, making the duties due the United States $3,927.80, less that estimated and liquidated formerly of $51.20, leaving an increase in duties of $3,876.60, and called upon Mr. Shafter, the customs agent of the Mexican International Railroad Company, for payment of this increase.

Other evidence was offered relating to the manner of the importation in question, and as to the usual course of business as transacted between the railroad company's customs agents and the collector of customs, which will be referred to in the opinion.

Henry Terrell and *Charles A. Boynton*, United States attorneys, for the United States.

Thos. W. Dodd, *R. H. Ward*, and *S. G. Newton*, for defendant in error.

Before PARDEE, MCCORMICK, and SHELBY, Circuit Judges.

SHELBY, *Circuit Judge*, after making the foregoing statement, delivered the opinion of the court:

1. The original entry of the merchandise was made July 25, 1903, and the duties, amounting to $51.20, were paid by the Mexican International Railroad Company, acting by its customs agent, F. A. Bonnet. On March 5, 1904, within less than one year of the original entry, the collector reliquidated the entry and assessed the increased duties to the amount of $3,876.60. Section 21 of the act of June 22, 1874 (18 Stat., 190), provides:

> Whenever any goods, wares, and merchandise shall have been entered and passed free of duty and whenever duties upon any imported goods, wares, and merchandise shall have been liquidated and paid, and such goods, wares, and merchandise shall have been delivered to the owner, importer, agent or consignee, such entry and passage free of duty and such settlement of duties shall, *after the expiration of one year from the time of entry*, in the absence of fraud, and in the absence of protest by the owner, importer, agent, or consignee, be final and conclusive upon all parties.

We have put in italics the phrase bearing directly on the point under discussion. Before "the expiration of one year from the time of entry" the settlement of duties is not conclusive on the Government. Before the expiration of the one year the collector may reliquidate the assessment, although the duties first assessed have been paid and the goods withdrawn for consumption. Louisville Pillow Company *v.* United States (144 Fed. Rep., 886; T. D. 27260); protests of Cassel (146 Fed. Rep., 146; T. D. 27116); Beard *v.* Porter (124 U. S., 437); Neresheimer *v.* United States (131 Fed. Rep., 977; T. D. 24872); Gandolfi *v.* United States (74 Fed. Rep., 549).

2. Under section 14 of the "act to simplify the laws in relation to the collection of revenues," the decision of the collector as to the rate and amount of duties chargeable upon imported merchandise is final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the

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person paying such fees, charges, and exactions other than duties, shall, within ten days after the ascertainment and liquidation of duties, give notice in writing to the collector setting forth his objections. Upon such notice being given, the collector shall transmit the invoice and all papers connected therewith to the Board of three General Appraisers, which Board shall examine and decide the case thus submitted. (Act of June 10, 1890.) In the case at bar, no notice of dissatisfaction having been filed within the time prescribed, the reliquidation is final and conclusive against all parties interested therein. Louisville Pillow Company *v.* United States (144 Fed. Rep., 386; T. D. 27260).

8. The United States contended on the trial that the Mexican International Railroad Company, on the facts proved, was the consignee within the meaning of the customs laws. If that contention is sustained, it would be liable for the duties assessed on reliquidation. There was in evidence a resolution of the board of directors of the railroad company providing for the appointment within the several collection districts of the United States of agents and attorneys, who shall have authority to receive and enter at the custom-houses any and all goods hereafter imported by the company or which may hereafter arrive consigned to the company. There was in evidence, also, a power of attorney, executed by the railroad company, constituting J. N. Shafter and F. A. Bonnet their agents to receive and enter at the custom-house at the port of Eagle Pass, Tex., all goods imported by or consigned to the railroad company, and generally to transact customs business of the railroad company at that port. The consular invoice in evidence contains the following caption:

Invoice of waste and cotton shipped by the Mexican International Railroad Company to the port of Eagle Pass, Tex., in railroad cars, and to be there entered at the custom-house, consigned to J. N. Shafter.—F. A. BONNET.

The indorsement on the invoice shows that it was presented to the consul by J. N. Shafter. The declaration of the consular invoice is made by "J. N. Shafter, customs agent of the Mexican International Railroad Company." He declares that he is the "agent of the merchandise in the within invoice," and that it is intended "to make entry of said merchandise at the port of Eagle Pass, Tex., in the United States of America." The invoice is indorsed, showing that the "shipper" is the Mexican International Railroad Company.

The original bill of lading for the goods, which was presented at the custom-house, together with the consular invoice at the time the entry was made, is made out on an official blank of the Mexican International Railroad Company, and shows, under the head of "Marks and numbers," the following: "The consignee and destination, F. A. Bonnet, Eagle Pass." The original entry of the goods was made by F. A. Bonnet, who made oath that he was the consignee of the merchandise offered for entry. The evidence tends to show that he was acting as the customs agent of the railroad company. The evidence of J. N. Shafter in the record shows that he was employed by the railroad company in 1903. He briefly describes the method of doing business by himself and the customs department in regard to shipments coming to the Mexican International Railroad Company. He testified that shipments usually come consigned to him (Shafter), and that the collector in accepting duties requires the signature of the servant of the employer who pays the duty. The merchandise "is shipped across the river to a local person at Eagle Pass. In this case the local person is Bonnet, who is chief clerk in my office, and that is done for the purpose of completing the records." The evidence shows that in this case the $51.20 of duties first assessed were paid by F. A. Bonnet, acting as the agent of the railroad company, with money furnished by the railroad company. The money so paid was charged on an expense bill, and presumably collected with the freight when the goods were withdrawn from the custom-house, forwarded to Philadelphia, and there delivered to J. R. C. Boyer.

There appears to be some conflict in the written evidence offered. The United States offered a bill of lading of the goods in question, in which, under the head of "Marks and numbers," is the following: "Consignee and destination, F. A. Bonnet,

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Eagle Pass." The defendant offered a "duplicate" bill of lading of the same date and for the same goods, on the back of which is the following indorsement: "Consignee and destination, J. R. C. Boyer, Philadelphia, Pa., via New Orleans and Morgan Line, care of J. N. Shafter, Eagle Pass." Both bills of lading were in the Spanish language, but only translations into English appear in the bill of exception.

It is provided by the first section of the customs administrative act that—

All merchandise imported into the United States shall for the purpose of this Act be deemed and held to be the property of the person to whom the merchandise may be consigned. * * *

Construing this statute in Baldwin *v.* United States (113 Fed. Rep., 217, 218), the court held that the Government is not called on to hunt up any ultimate consignee when there is a primary consignee to whom the goods are sent, and who himself presents the invoice, makes the entry, receives the bill of lading, and gets the goods, thus being himself their importer. In the case at bar the evidence, to say the least, tends strongly to show that the Mexican International Railroad Company, through its authorized agent, was the consignee of the goods. F. A. Bonnet, acting, the evidence tends to show, as the agent of the railroad company, declared himself to be the consignee. It has been held that such declaration estops one from denying that he is the consignee when sued for the duties. United States *v.* Vandiver (133 Fed. Rep., 252; T. D. 26036).

It is held in United States *v.* Bishop (125 Fed. Rep., 181; T. D. 25093), that the consignee of imported goods is deemed the owner for the purpose of the collection of the duties on the goods consigned.

In the various transactions relating to the importation of these goods, the evidence shows that Bonnet and Shafter were acting as the attorneys in fact of the railroad company. In some of their statements they described themselves as such agents, but in others they used only their individual names. But the evidence as to the course of business, as well as the evidence relating to the importation in question, shows that all parties concerned knew that both Shafter and Bonnet were acting for the railroad company. They were probably relieved of personal liability, being the agents of a disclosed principal. Whitney *v.* Wyman (101 U. S., 392).

The facts were sufficient, we think, to sustain a verdict that the railroad company, acting through its agents, Shafter and Bonnet, was really the importer and consignee of the goods. It was error, therefore, to direct a verdict in favor of the railroad company.

The judgment of the district court is reversed, and the cause remanded, with instructions to grant a new trial.

(T. D. 28183.)

Evergreen seedlings.

UNITED STATES *v.* OUWERKERK.

U. S. Circuit Court, Southern District of New York. May 14, 1907. Suit 4136.

EVERGREEN SEEDLINGS—LAURELS—RHODODENDRONS—NURSERY STOCK.

Species of the laurel (*Aucuba japonica* and *Kalmia latifolia*) and of the rhododendron (*Rhododendron ponticum*), which retain their verdure throughout the year, are "evergreens" within the meaning of paragraph 252, tariff act of 1897; and under said paragraph seedlings of those plants are dutiable as "evergreen seedlings" rather than as "nursery stock."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6169 (T. D. 26772), reversing the assessment of duty by the collector of customs on importations by P. Ouwerkerk at the port of New York. Note T. D. 26880, directing the application for review.

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The case relates to three varieties of plants, designated as *Aucuba japonica* or Japanese laurel, *Rhododendron ponticum*, and *Kalmia latifolia* or American laurel, which the Board held dutiable under the provision for "evergreen seedlings" in paragraph 252, tariff act of 1897, rather than as "nursery stock" under the same paragraph, as classified by the collector. The Government's contention as stated in the petition is that the Board was in error—

In holding that the word "evergreens" as applied to plants covers not only those commonly known as "evergreens" but also other plants which retain their verdure through all seasons, among which are the rhododendrons and laurel in question.

D. Frank Lloyd, assistant United States attorney, for the United States.

Hatch & Clute (*Walter F. Welch* of counsel), for the importer.

PLATT, *District Judge:* Decision affirmed.

(T. D. 28184.)

Lithographic wall pockets.

KNAUTH *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 16, 1907. Suit 4164.

1. WALL POCKETS—MANUFACTURES OF PAPER—LITHOGRAPHIC PRINTS.

   Wall pockets made from cardboard on which lithographic prints have been pasted, being so designed that they can be folded into shapes suitable for holding small articles, and having pincushions or calendars attached, are not "lithographic prints" within the meaning of paragraph 400, tariff act of 1897, but are dutiable as manufactures of paper under paragraph 407.

2. EVIDENCE—RECORDS IN OTHER CASES—ADMISSIBILITY.

   It was error for the Board of General Appraisers to admit as evidence in a case testimony that had been taken in another case relating to somewhat different articles, where counsel in the latter case had not participated in the former proceedings, nor had opportunity of cross-examining the witnesses and had objected to such admission.

3. SAME—APPEAL FROM GENERAL APPRAISERS—COMPETENCY OF EVIDENCE ADMITTED BY BOARD.

   While section 15, customs administrative act of 1890, provides that on review of a decision of the Board of General Appraisers "all the evidence taken by and before said Appraisers shall be competent evidence before said circuit court," the court may nevertheless give such evidence very slight weight.

4. LITHOGRAPHIC PRINTS—COMMERCIAL DESIGNATION.

   "Lithographic prints" in paragraph 400, tariff act of 1897, is not a term of commercial designation, and should be applied according to the ordinary meaning of the words.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 9467 (T. D. 26939), affirmed the assessment of duty by the collector of customs at the port of New York on articles imported by Knauth, Nachod & Kühne. The Board's opinion reads as follows:

FISCHER, *General Appraiser:* The merchandise consists of lithographically printed wall pockets, each with a small calendar pad attached. Duty was assessed thereon at the rate of 6 cents per pound under the provisions of paragraph 400 of the tariff act of 1897. They were claimed to be dutiable properly at 25 per cent under paragraph 402 or at the same rate under paragraph 403, or at 35 per cent under paragraph 407 of said act.

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In G. A. 4959 (T. D. 23169), the testimony taken, which on motion of counsel for the Government is made a part of the record in the case at bar, showed that articles of this character are known in the trade as lithographic prints, and in G. A. 5474 (T. D. 24782), wall pockets precisely like those in question, except that there was no calendar pad attached, were held to be dutiable under paragraph 400. In the present instances the pads are lithographed on thin paper, but as the cardboard is the principal and substantial part of the design, the goods are dutiable under the rule laid down in G. A. 6041 (T. D. 26370), at 6 cents per pound as assessed. The protests, including protests 173179–80, which were formally abandoned by the importers, are overruled and the decision of the collector affirmed in each case.

The pertinent part of section 15, customs administrative act of 1890, which is referred to in the opinion of the court (*infra*), is as follows:

The court shall order the Board of Appraisers to return to said circuit court the record and the evidence taken by them, * * * and all the evidence taken by and before said Appraisers shall be competent evidence before said circuit court.

Everit Brown, for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

PLATT, *District Judge:* The merchandise involved in this case is wall pockets. These are made in the following manner: The lithographer makes what is concededly a lithographic print, the same being an ornamental design in color, produced by printing from stone, zinc, or other equivalent material. These lithographic prints are sent to another manufacturer, who pastes them upon cardboard, embosses them, cuts them out, and puts them in the shape of little pockets designed to hang upon the wall and hold odds and ends. They are imported in this condition, all of them having separate pieces accompanying to form the pockets. They are not used in the imported condition, as they are imported in a flat shape which is commonly known as a "knocked down" condition. Some of these articles are decorated with pincushions and most of them have calendars attached, which calendars are produced by ordinary printing and not lithographic printing.

The goods were assessed for duty at 6 cents per pound under paragraph 400 of the tariff act of 1897 as "lithographic prints." The importers claim that they are not lithographic prints, and that therefore they fall into the more general clause for "manufactures of paper, or of which paper is the component material of chief value" found in paragraph 407 of said act.

Counsel for the United States makes a preliminary question as to whether paper be in fact the component material of chief value. I am satisfied on the testimony of all the witnesses that it is the component of chief value. Under the decisions the various components of an article must be taken in the condition in which they are found in the article. And there is practically no component in these wall pockets except paper, some of which is in a lithographed condition and enhanced in value beyond the condition of ordinary paper, but is still paper.

On the main question involved I am clearly of the opinion that in the wholesale trade and commerce of the United States on and immediately before July 24, 1897, there was no such definite, general, and uniform understanding to the term "lithographic prints" as the decisions require to impose such commercial meaning on terms in the tariff act.

The Board of General Appraisers relied on the testimony taken in what may be called the "Overton case" some years previously. G. A. 4959 (T. D. 23169). At the hearing before the Board this testimony was offered in behalf of the Government, but its acceptance was objected to by counsel for the importers, on the grounds that they had no participation in the proceedings in the Overton case; that no opportunity for cross-examination of the witnesses in that case was afforded to present counsel, and that the merchandise in the Overton case is not shown to be the same as the samples in the present case. The samples in the Overton case were before this court together with the samples of the merchandise now in dispute, and it is evident that there are

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differences; so that what the witnesses said about the samples in the Overton case might very possibly not have been said about the samples in the present case. For all these reasons I am of the opinion that such testimony in the Overton case should not have been admitted by the Board of Appraisers in the case at bar. Having been admitted and having become by operation of section 15 of the customs administrative act competent evidence in this court, I am nevertheless compelled to give it very slight weight in view of the preceding considerations. Giving it such weight as I think it is entitled to, and also taking into account the subsequent evidence in the case at bar before a referee, including the testimony of witnesses both for the importers and the Government, I have reached the conclusion, as previously indicated, as to the commercial meaning of "lithographic prints." We are therefore relegated to the ordinary meaning of the words; and as these articles are clearly manufactures of lithographic prints (a provision for which occurred in the act of 1890, but is omitted from the present law) rather than lithographic prints themselves (*In re* Kursheedt Manufacturing Company, 54 Fed. Rep., 159), I feel convinced that they are dutiable not under paragraph 400, but under paragraph 407 of the act.

The decision of the Board of General Appraisers is reversed.

(T. D. 28185.)

Trimmed fur hats.

RHEIMS COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 15, 1907. Suit 4393.

TRIMMED FUR HATS.

In finding the component of chief value under paragraph 432, tariff act of 1897, covering "hats * * * trimmed, * * * composed wholly or in chief value of fur," *Held* that the value of the trimming should be taken into consideration, and that fur hat bodies trimmed with another material of greater value than the fur are not included in the paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6411 (T. D. 27541), affirming the assessment of duty by the collector of customs at the port of New York on goods imported by Leon Rheims Company.

The goods consisted of trimmed hats, of which the bodies are composed of fur and the trimming of silk and other materials, silk being the component of chief value in the completed articles. The collector classified them under paragraph 390, tariff act of 1897, as silk wearing apparel, against the importers' contention that they were dutiable under paragraph 432, relating to "hats * * * trimmed or untrimmed, * * * composed wholly or in chief value of fur." The theory of this contention was that in determining the applicability of the latter paragraph the trimming should be ignored and the question of whether the goods were "composed wholly or in chief value of fur" should be decided by reference solely to the bodies of the hats. The Board having overruled this contention, the importers have brought these proceedings for review of that ruling.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

PLATT, *District Judge:* Decision affirmed.

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(T. D. 28186.)

Olive oil in large tins.

UNITED STATES *v.* LA MANNA.

U. S. Circuit Court, Southern District of New York. May 15, 1907. Suit 4622.

OLIVE OIL IN LARGE TINS.

Under paragraph 40, tariff act of 1897, relating to olive oil "in bottles, jars, tins, or similar packages," and to "olive oil, not specially provided for," *Held* that oil in tins of a capacity of 5 gallons is dutiable under the latter provision rather than the former.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6469 (T. D. 27681), reversing the assessment of duty by the collector of customs at the port of New York on merchandise imported by La Manna, Azema & Farnan. Note T. D. 27692, directing the application for review.

The question was whether olive oil in 5-gallon tins was dutiable under the provision in paragraph 40, tariff act of 1897, for olive oil "in bottles, jars, tins or similar packages," as classified, or that in the same paragraph for "olive oil, not specially provided for," as claimed by the importers. The Board found that oil in tins of that size is not usually sold to the consumer, but as a rule to hotels or the retail trade, and, holding that the provision for oil in tins was intended to cover only the smaller packages ordinarily sold to consumers, sustained the importers' contention. Note Lomba *v.* United States (T. D. 27707), in which the district court for the district of Porto Rico reached a similar conclusion in an analogous case.

D. Frank Lloyd, assistant United States attorney, for the United States.

Brooks & Brooks (*Frederick W. Brooks* of counsel), for the importers.

PLATT, *District Judge:* Decision affirmed.

(T. D. 28187.)

Dragees.

LA MANNA *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 16, 1907. Suit 4521.

1. DRAGEES—ARTICLES IN PART OF SILVER—CONFECTIONERY.

Dragees, consisting of small pellets composed chiefly of sugar and coated with silver, *Held* not dutiable under paragraph 212, tariff act of 1897, relating to sugar candy and confectionery, but under paragraph 193, as articles composed in part of silver.

2. CLASSIFICATION—SUBSTANTIAL COMPONENT.

The presence in imported articles of .276 per cent of silver, constituting a silver coating therefor, is sufficient to be considered in determining the tariff classification of the articles.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see Abstract 12762 (T. D. 27591), which, on the authority of *In re* Geilfuss, G. A. 5485 (T. D. 24799), affirmed the assessment of duty by the collector of customs at the port of New York on an importation by La Manna, Azema & Farnan.

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The merchandise in controversy consisted of dragees, being small spherical or spheroidal objects with a silver coating and a sweet taste, which the Board stated in its opinion are used by bakers for decorating cakes and to some extent by confectioners. On analysis they were found to be composed as follows: Cane sugar, 73.786 per cent; wheat starch centers, 25.938 per cent; silver, metallic, .276 per cent.

The Board held the collector to have correctly classified these articles under paragraph 212, tariff act of 1897, relating to sugar, candy, and confectionery. The importers contended that they should have been classified under paragraph 193 as articles in part of silver not specially provided for.

Hatch & Clute (*Walter F. Welch* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

PLATT, *District Judge:* Decision reversed.

(T. D. 28188.)

Appliquéed fabrics.

VANTINE *v.* UNITED STATES.

U. C. Circuit Court, Southern District of New York. May 17, 1907. Suit 3576.

1. APPLIQUÉED FABRICS.

Silk fabrics, on which are sewn with a colored thread cotton cords loosely wound with gilt paper, doubled and run along the fabric at distances varying from 6 to 18 inches, and looped at varying intervals without design or regularity, and which are sold chiefly in the condition in which imported, but from which to some extent the cord was removed because the goods found a readier sale, *Held* dutiable as "appliquéed" goods under paragraph 390, tariff act of 1897.

2. CLASSIFICATION—TEMPORARY CONDITION OF MERCHANDISE—SUBTERFUGE.

Where cheaply appliquéed fabrics were to some extent sold after importation with the appliquéed feature removed, but it appeared that they had not been appliquéed solely as a subterfuge to secure the lower duty on appliquéed goods, the greater portion having been sold in the condition in which imported, *Held* that it would be improper to disregard the appliqué feature on the theory that the goods were put in this condition temporarily, during importation, in order to avoid the legal duties.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 5688 (T. D. 25330), affirming the assessment of duty by the collector of customs at the port of New York on importations by A. A. Vantine & Co. The goods in controversy were described by the Board as follows:

This merchandise consists of woven fabrics of silk in the piece, boiled off, and having a cotton cord loosely wound with gilt paper sewed upon the fabric with a colored thread. These cords are doubled and run lengthwise of the fabric at distances varying from about 6 to 18 inches apart, and are looped in loops of a variety of shapes and sizes at irregular intervals of from 9 to 12 inches without design or the least semblance of regularity.

The Board found that these materials had been temporarily put in the appliquéed form for the purpose of making them subject to a duty lower than that to which they would be liable if classified as silk fabrics, and that they were not in "a permanent condition either of their manufacture or sale," and held (syllabus, par. 2) that "the dutiable character of merchandise is determined by its form when made up into a completed article, and not as it may appear by reason of changes made thereafter, effecting a temporary condition during importation in order to avoid duties imposed by law."

D. Macon Webster, for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

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PLATT, *District Judge:* The merchandise in question was assessed for duty as woven fabrics of silk, boiled off, at the rate of $3 per pound, under the provisions of paragraph 387 of the tariff act of July 24, 1897; and is claimed properly dutiable at the rate of 60 per cent ad valorem, either directly or by similitude, by virtue of section 7, as "articles appliquéed, made of silk or of which silk is the component material of chief value, not specially provided for," under the provisions of paragraph 390 of said act. The protest sets forth other claims, none of which were insisted upon at the trial. The Board of General Appraisers overruled the protest and sustained the assessment of duty by the collector. The importer appeals to this court.

In 1902 the same Board in G. A. 5202 (T. D. 23977) found the same merchandise to be appliquéed. Now, upon further consideration, it has reached the opposite conclusion. If the tinsel cord which appears on the silk were a flimsy, impracticable, useless appliance, and had been put upon the silk after manufacture solely as a subterfuge, to be stripped off after the merchandise had been safely lodged in the control of the importer, the decision of the Board would commend itself to my judgment. The evidence before the Board, coupled with that taken in court, does not bring my mind to such a conclusion.

The merchandise as imported may not be in the highest sense ornamental, durable, permanent, and salable. It is, however, fairly so; and in those respects only differs from Exhibit 20 in suit, concededly an appliquéed article, in degree, if it differs at all. The testimony shows that 60 per cent of the importation was used as it came, and that the cord was removed from the balance because in that condition it found a readier sale in the market. As between plain silk, boiled off, and silk appliquéed, it deserves the latter classification.

The decision of the Board of General Appraisers is reversed.

(T. D. 28189.)

Strung beads.

HENRY E. FRANKENBERG COMPANY *v.* UNITED STATES.

United States Supreme Court. May 13, 1907. No. 257 (suit 3770).

BEADS TEMPORARILY STRUNG.

The provision in paragraph 408, tariff act of 1897, for "beads of all kinds, not threaded or strung," was intended to apply only to beads actually loose, and beads strung temporarily for facilitating transportation are not included therein.

ON writ of certiorari to the United States circuit court of appeals for the second circuit.

[Decision in favor of the Government.]

Brooks & Brooks (*Frederick W. Brooks* of counsel), for the importers.

Henry M. Hoyt, Solicitor-General, and *Edward T. Sanford*, Assistant Attorney-General, for the United States.

Mr. Justice MCKENNA delivered the opinion of the court:

The question involved in this case is whether certain importations of metal beads are dutiable under paragraph 408 of the tariff act of July 24, 1897, at 35 per cent ad valorem, or at 45 per cent ad valorem under paragraph 193.

The collector assessed them at the latter rate. The petitioner protested. Upon submission of the protest to the Board of General Appraisers that Board sustained the collector. G. A. 5878 (T. D. 25891). Its decision was successively affirmed by the circuit court (144 Fed. Rep., 704; T. D. 26455) and the circuit court of appeals (146 Fed. Rep., 63; T. D. 27188).

The applicable paragraphs are, respectively, as follows:

408. Beads of all kinds, not threaded or strung, thirty-five per centum ad valorem. * * *

193. Articles or wares not specially provided for in this Act, composed wholly or in part of * * * metal, and whether wholly or partly manufactured, forty-five per centum ad valorem.

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There is no dispute about the character of the articles. They are metal beads strung on cotton cords or strings. They can not, therefore, be said to be beads "not threaded or strung," which paragraph 408 makes dutiable at 35 per cent, if the words of that paragraph be taken literally. But it is contended that the construction of that paragraph is dependent upon the use to which the beads are put and the purpose on account of which they are strung. It is contended, and the contention is supported by the testimony, that the beads are used in the manufacture of purses, for the embroidery of cushions and dresses, never for personal adornment, and that they are strung or threaded in bunches for the purpose of facilitating transportation, and hence, in contemplation of the statute, loose beads. To this argument the circuit court of appeals of the seventh circuit yielded. United States *v.* Beuttner (133 Fed. Rep., 163; T. D. 25787). It did not prevail, however, with the circuit court of appeals of the second circuit in the case at bar nor in a prior case. *In re* Steiner (79 Fed. Rep., 1003). Notwithstanding this conflict in the circuit courts of appeals, the case is in such narrow compass that an extended discussion is not necessary. It may be that the stringing of the beads has but a temporary purpose. We, however, are not at liberty to disregard the condition upon which the law makes the duty depend. Indeed, the considerations expressed by the Board of Appraisers make it certain that the language of paragraph 408 was deliberately used to apply only to beads actually loose. This view is supported by the testimony as well. It was testified that prior to 1897 the terms threaded and strung beads were familiar in the importing trade, and that beads strung on "threads for temporary use were commercially known at that time as strung beads." And it was further testified that there was an increase in value over unstrung beads from 15 to 20 per cent on account of the labor attached to stringing.

Judgment affirmed.

Mr. Justice MOODY took no part in the decision of this case.

(T. D. 28190.)

Mocha hair on the skin.

GOAT AND SHEEPSKIN IMPORT COMPANY *v.* UNITED STATES.

United States Supreme Court. May 13, 1907. No. 261 (suit 3641).

1. MOCHA HAIR ON THE SKIN—WOOL.

The enumeration of "wool" in paragraph 351 and elsewhere in the tariff act of 1897 was not made in a generic sense which includes all growth upon the skin of a sheep; and hair on Mocha sheepskins, which is commercially known and dealt in as "Mocha hair" and not as wool, and which lacks the characteristics of wool, is not subject to such provisions, but, being still on the skin, should be regarded as a part of the skin and classified free of duty under paragraph 664, relating to "skins of all kinds, raw."

2. COMMERCIAL DESIGNATION.

The commercial designation of an article in a tariff act is the name by which it should be classified for duty, without regard to its scientific designation, material, or use, unless Congress has clearly manifested a contrary intention.

ON writ of certiorari to the United States circuit court of appeals for the second circuit.

[Decision adverse to the Government.]

For decision below see 145 Federal Reporter, 1022 (T. D. 27190), affirming a decision of the circuit court (141 Fed. Rep., 493; T. D. 26404), affirming a decision of the

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Board of United States General Appraisers, Abstract 2401 (T. D. 25499), which had affirmed the assessment of duty by the collector of customs at the port of New York.

Hatch & Clute (*J. Stuart Tompkins* of counsel), for the importers.

Henry M. Hoyt, Solicitor General, and *Edward T. Sanford*, Assistant Attorney-General, for the United States.

This case comes here by virtue of a writ of certiorari issued from this court to the United States circuit court of appeals for the second circuit, for the purpose of reviewing the action of the courts and of the customs authorities in relation to an assessment of duty on certain importations made by the petitioner, appellant, at the port of New York.

The merchandise on which duty was assessed was a growth upon certain skins of the Mocha sheep, imported from Hodeida, Arabia, which growth was classified by the collector as wool on the skin of the third class and assessed for duty at 3 cents per pound, under the provisions of paragraph 360 of the tariff act of July 24, 1897 (30 Stat., pp. 151, 183). The importer duly protested against the classification and insisted that the merchandise was entitled to entry free of duty under paragraph 571 (30 Stat., *supra*, p. 198) or under paragraph 664 of such act (p. 201). Paragraphs 351, 358, and 360, under which the Government claims duty, and paragraphs 571 and 664, under which the importer claims free entry, are set forth in the margin. *a*

The collector having returned the merchandise in question as wool of the third class, under paragraph 360, the importer appealed to the Board of General Appraisers, where the ruling of the collector was sustained, and the importer then appealed to the circuit court and then to the circuit court of appeals, each of which courts sustained the ruling of the Board of General Appraisers and the collector.

Before the Board of General Appraisers the importer produced six witnesses, who testified as to the character, use, and commercial designation of the merchandise. On the appeal to the circuit court a referee was there appointed, and the importer offered further evidence to sustain his claim that the merchandise was entitled to free entry.

No testimony was offered by the Government. It is not claimed by the Government that the merchandise in question comes under paragraph 351 as wool of the third class (except as it may be wool of like character), as it is not Donskoi, native South American, Cordova, Valparaiso, native Smyrna, or Russian camel's hair, but it is asserted that the growth on the skins was wool on the skin under paragraph 360, or was a wool of like character as that above enumerated in paragraph 351.

The evidence shows that the hair or wool (whichever it is called) grows on the Mocha white sheep, imported from Hodeida, Arabia. The growth to be found on this breed of sheep is not bought or sold in this country as wool, but as hair. It would not be accepted as a delivery of wool of any grade by those dealing in that article. Although there might have been a very small proportion of what might possibly be

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a Paragraphs from tariff act of 1897, under which the Government claims (30 Stat., 151, 183):

"351. Class three, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Syria, and elsewhere, excepting improved wools hereinafter provided for.

"358. On wools of the third class and on camel's hair of the third class the value whereof shall be twelve cents or less per pound, the duty shall be four cents per pound.

"360. The duty on wools on the skin shall be one cent less per pound than is imposed in this schedule on other wools of the same class and condition, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe."

Petitioner claims under following paragraphs:

"571. Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this Act; and human hair, raw, uncleaned, and not drawn.

"664. Skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this Act."

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termed very inferior wool on these skins (not more than 10 per cent in any case, and frequently less) yet there was no substantial use of any portion of the growth on the skins for purposes for which wool is generally used. To some extent, but very little, it had been tried in mills to spin, and it might be used sometimes by carpet manufacturers in a small way, and efforts had been made to use it, mixed with wool, in spinning, but it was not practically successful, nor was it practicable to use it for other purposes for which wool is used. The chief, or predominant, and almost sole use of the substance is as hair for stuffing, and for the saddlery trade, and by bed manufacturers for stuffing purposes. It is bought and sold all over the country as Mocha hair. The skin upon which the substance grows is the thing that is valuable. A large part of the skins imported into this country is used in the manufacture of glove leather. One witness testified that his firm so used from 75 to 90 per cent of the skins imported, and the growth thereon was bought and sold as Mocha hair. It costs more to remove the growth from the skin than it sells for after its removal. It can not be used for spinning purposes, because it would not hold together. It might be carded, but there would not be much left after carding. The price of the skins on which this growth is found is not influenced by the quantity of the growth on them. The more of a growth there is, the less the skin will bring, or, as is said, the more hair, the poorer the skin. The skins are sold by the importers to tanners of gloves and shoe leather, just as they arrive. After the growth is washed and removed from the skin it may be sold for from 3 to 5 cents per pound, which is less than the cost of removing it. In buying the skins no notice is taken of the growth, the only consideration being the value of the pelt, and the pelts are worth no more with long hair on than short hair. The growth has never been accepted or sold as wool, but on the contrary, prior to July 24, 1897, when the tariff act was passed, it was uniformly regarded and bought and sold in the United States as hair. "Mocha hair" was the trade nomenclature prior to 1899, and as such the trade name was definite and uniform throughout the United States, and dealers in it never knew it to be called anything else than Mocha hair. It has not the appearance of wool, does not feel like wool, and has none of the qualities of wool. It is bought from tanners after it has been taken from the skin by them, and it is thus sold and bought as Mocha hair, and the skins are used for leather by the tanners.

One of the witnesses called on behalf of the importers was an examiner of wool fibers and skins at the port of New York, which position he had held for about fifteen years. He said that when he first went into the Government employ such skins as those in question were returned free, the hair as well as the skin, but that practice has since been changed. The witness further said that if the growth in question were found on a goat he would return it as hair of a goat, and entitled to free entry; that wool could be run down, or deteriorate, to such a condition as the growth in question, but that it was in fact, mostly "what they call dead hair or kemp;" that, although it could possibly be carded, it was not commercially suitable, and there would not be much left after they got through carding it. On cross-examination, the witness said that he would return the article in question as Mocha sheepskin with the wool on. On such a skin as the one in question the witness said there was a substance which he would call wool, which was about 10 per cent only of the growth; that he examines such skins as the ones in question and throws out those he considers dutiable when there is enough wool to call it dutiable, and lets the skins go not dutiable when you could not make anything out of the growth in any way, although some use might possibly be made out of it.

The cross-examination of other witnesses was to the effect that this growth had been tried in mills for the purpose of spinning, but very little, being used with other stock to make into yarn, but it has not been successfully used for that purpose; it might be used sometimes by carpet manufacturers in a small way, and while it could not be used or spun alone, it might be carded. It was also said on cross-examination of one

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of the witnesses that if such growth ran pretty white it is sometimes used in those low-grade carpet yarns where they put in such stuff as jute packing is made of and some hair like the growth in question. The evidence is, however, overwhelming, and the witnesses substantially unanimous that this substance is not known as wool, and is neither bought nor sold as such, and is commercially known as Mocha hair and is not used as wool.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the court:

The evidence in this case, taken before the Board of Appraisers and also before the circuit court, is uncontradicted. It shows that the substance in question is not wool, has none of its characteristics and is not put to any of its uses, and does not appear like wool. On the contrary, it is composed mostly of dead hair or kemp and can not be remuneratively carded, nor is it commercially suited for carding, nor for spinning. Its commercial designation is Mocha hair, and it is not known or regarded or recognized as wool in any of the markets of the country.

It is not denied that the commercial designation of an article, which designation was known at the time of the passage of a tariff act, is the name by which the article should be classified for the payment of duty, and, as is stated, "without regard to their scientific designation and material of which they be made or the use to which they may be applied." Two Hundred Chests of Tea (9 Wheat., 430, 438); Arthur *v.* Morrison (96 U. S., 108); American Net and Twine Company *v.* Worthington (141 *Id.*, 468); Hedden *v.* Richard (149 *Id.*, 346, 348). As was said by Mr. Justice Story in Two Hundred Chests of Tea (*supra*), Congress did not "suppose our merchants to be naturalists or geologists or botanists. It applied its attention to the description of articles as they derived their appellations in our own markets, in our domestic as well as our foreign traffic." And in Hedden *v.* Richard (*supra*), it was said:

The language of commerce * * * must be construed, * * * particularly when employed in the denomination of articles, according to the commercial understanding of the terms used.

The commercial designation should prevail, unless Congress has clearly manifested a contrary intention. Cadwalader *v.* Zeh (151 U. S., 171, 176).

We are of opinion that the use of the word "wool" in the tariff act excluded a substance which, while it was a growth upon a sheepskin, was nevertheless commercially known, designated, and dealt in as Mocha hair, having none of the characteristics of wool, and which would not be accepted by dealers therein as a good delivery of wool.

In this case the evidence is uncontradicted that the growth on these skins was commercially known as Mocha hair, and that it was not used in the way wool is used, or as a substitute for wool. It ought not, simply for the reason that the skin upon which it grows is the skin of a sheep, to be classified as wool, under paragraph 360 of the tariff act, and thereby be subjected to a duty as high as the value of the substance itself.

Although it has been so classified, and that classification has been affirmed all through, yet the question is not presented to this court as if it were a question of fact decided upon contradictory evidence, and concluding this court for that reason. There is, in truth, no contradictory evidence in the case. It is one, where in our opinion the courts below have given undue weight to the evidence elicited on cross-examination of witnesses called on the part of the importer, which showed that there possibly was, in some cases, a very little inferior wool found on these skins, while the courts ignored the other facts, as testified to by the same witnesses and already mentioned, which showed beyond the possibility of successful contradiction that the substance was erroneously classified as wool.

Upon the facts, the substance ought not to have been so classified. The growth, being still on the skin, should have been regarded as part of such skin, and classified under paragraph 664, in the free list, and not as a sheepskin with wool on.

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We do not agree that the word "wool" in this act is used in a generic sense so far as this particular point is concerned. The word does not necessarily include all growth upon the coat of a sheep, even though the substance is like that in question here.

Counsel for the Government cites from the Encyclopædia Britannica, where, in speaking of the difficulty in determining the dividing line between hair and wool, it is said:

At what point indeed it can be said that an animal fiber ceases to be hair and becomes wool it is impossible to determine, because in every characteristic the one class by imperceptible gradations merges into the other, so that a continuous chain can be formed from the finest and softest merino to the rigid bristles of the wild boar.

It may be difficult in some cases to define the line between "wool" and "hair" as a growth upon skins, but we do not regard that difficulty as an argument for the construction contended for by counsel for the Government. That argument leads to the classification of a substance like that in question, as wool, when in fact it bears no resemblance to it, is not used as wool, and has none of its characteristics, and is known commercially as Mocha hair, and is so bought and sold over the whole country. The case is one of degree, and because in some few cases the points may closely approach each other and there may be in such cases some difficulty in telling wool from hair, yet that fact furnishes no reason for refusing to adopt the general test which in most cases is easily applied, fitness, identity of use, commercial designation. To adopt the claim of counsel eliminates all inquiry as to whether an article is wool or hair, and leaves simply the question whether it is to be found on what may be called the wool-bearing animals or on the alpaca or other like hair-coated animals. Some sheep are wool-bearing animals, therefore the hair on the skin of the Mocha sheep is wool and must be classified as such. We do not agree with this claim. If an article does not, to a dealer, look like wool, can not be used as wool, is not commercially known as wool, but, on the contrary, is bought and sold throughout the country as Mocha hair and is so designated commercially by those dealing in it, it ought not to be classified as wool or made to pay duty as such, simply because it grows on a sheep.

We have looked over the various authorities cited by counsel for the Government, but we see nothing in any of them tending to the conclusion that upon the facts in this case the growth on the skin of the Mocha sheep was properly classified as wool.

Taking all the evidence in this case, uncontradicted as it is, we feel compelled to the conclusion that the classification in this case, adopted by the courts below and by the appraisers and collector was wrong, and that the merchandise in question was entitled to free entry.

The judgments of the courts below are reversed and the case remanded to the circuit court with instructions to take such further proceedings as may be necessary, not inconsistent with this opinion.

Reversed.

Mr. Justice MOODY took no part in the decision of this case.

NOTE.—The Government in T. D. 28195 acquiesced in the foregoing decision.

(T. D. 28191.)

Cancellation of bonds.

Bonds for shipments to Mexico under section 3005, Revised Statutes, to be canceled on certificate of collector of customs at the frontier port, as in the case of similar shipments to Canada.

TREASURY DEPARTMENT, *May 23, 1907.*

SIR: The Department is in receipt of your letter of the 17th instant, transmitting with your favorable recommendation, a communication of Morgan's Louisiana and Texas Railroad and Steamship Company, in which request is made that transportation and

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exportation bonds covering merchandise exported to Mexico may be canceled on the certificate of exportation issued by the collector of customs at the frontier port in the United States.

The applicant states that it is difficult to procure landing certificates covering these exportations, necessitating considerable delay and expense, and asks that the same concessions enjoyed by the Canadian exporters be extended to like shipments of merchandise to Mexico.

In reply, you are informed that merchandise forwarded to Mexico under transportation and exportation entries in accordance with section 3005, Revised Statutes, may be treated as an exportation from the frontier port, as in the case of shipments to Canada, under the regulations contained in Circular 56 (T. D. 26295) of April 19, 1905.

Respectfully, JAMES B. REYNOLDS,
(46991.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New Orleans, La.*

(T. D. 28192.)

Drawback on men's vests.

Department's regulations of June 4, 1906 (T. D. 27389), extended to cover men's clothing manufactured by Heidelberg, Wolff & Co., of New York City, from imported fancy vestings.

TREASURY DEPARTMENT, *May 23, 1907.*

SIR: The Department's regulations of June 4, 1906 (T. D. 27389), providing for the allowance of drawback on the exportation of men's clothing manufactured by the Stein-Block Company, of Rochester, N. Y., with the use of imported materials, are hereby extended, so far as applicable, to cover the exportation of men's vests manufactured by Heidelberg, Wolff & Co., of New York City, with the use of imported fancy vestings, in accordance with their sworn statement, dated May 14, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(46998.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28193.)

Drawback on automobiles.

T. D. 26002 of January 31, 1905, extended to cover automobiles manufactured by the Pope Manufacturing Company, of Hartford, Conn., with the use of imported tires.

TREASURY DEPARTMENT, *May 23, 1907.*

SIR: The Department's regulations of January 31, 1905 (T. D. 26002), providing for the allowance of drawback on the exportation of automobiles manufactured by the Locomobile Company of America, of Bridgeport, Conn., with the use of imported rubber tires to which

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valves of domestic manufacture are fitted, are hereby extended, so far as applicable, to cover the exportation of automobiles manufactured by the Pope Manufacturing Company, of Hartford, Conn., with the use of imported tires, in accordance with their sworn statement, dated May 3, 1907, which is transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(38523.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28194.)

Drawback on asphalt preparations.

Drawback on asphalt preparations manufactured by the Barber Asphalt Paving Company, of Philadelphia, Pa., with the use of crude and refined Trinidad Lake asphalt and crude rock asphalt.

TREASURY DEPARTMENT, *May 23, 1907.*

SIR: On the exportation of refined asphalt under the brand "T" manufactured wholly with the use of imported Trinidad Lake asphalt, and the brands "R" and "S" manufactured in part with the use of imported Trinidad Lake asphalt, mastics manufactured in part from imported crude rock asphalt, crude or refined Trinidad Lake asphalt, genasco roofing cement, and Trinidad paving cement manufactured in part with the use of refined Trinidad Lake asphalt by the Barber Asphalt Paving Company, of Philadelphia, Pa., a drawback will be allowed equal in amount to the duties paid on the imported materials so used, less the legal deduction of 1 per cent.

The preliminary entry must show the gross and net weight of the shipping packages and the weight of the articles not packed.

The drawback entry must show the total weight of the different kinds of articles exported and the total quantity of refined asphalt and rock asphalt, stated separately, contained therein, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated May 16, 1907, transmitted herewith for filing in your office.

In liquidation, the quantities of refined asphalt and rock asphalt which may be taken as the bases for the allowance of drawback may equal the quantities declared in the drawback entry after official verification of exported quantities, provided that in no case shall it exceed the percentages shown in the manufacturers' sworn statement aforesaid, with 33⅓ per cent of the weight of the refined asphalt added thereto to compensate for loss in the process of refining.

Respectfully, JAMES B. REYNOLDS,
(28227.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28195.)

Mocha hair on the skin.

Decision of United States Supreme Court in Goat and Sheepskin Import Company *v.* United States (T. D. 28190) acquiesced in.

TREASURY DEPARTMENT, *May 24, 1907.*

SIR: I have to inform you that suit 261, October term, 1906, of the Goat and Sheepskin Import Company *v.* United States (T. D. 28190), was recently decided by the United States Supreme Court adversely to the Government.

The merchandise in suit consisted of skins of the Mocha sheep, imported with the wool or hair on. The growth on the skins was classified for duty as wool, class 3, under paragraph 360 of the act of July 24, 1897. The importers protested, claiming the growth to be hair and as such free of duty under paragraph 571 or 664 of the same act, which claim was sustained by the United States Supreme Court in this case, the court finding that the evidence clearly showed the growth on the skins to be commercially known and dealt in as hair.

You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement of the case.

Respectfully, JAMES B. REYNOLDS,
(12131.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28196.)

Manner of payment of compensation of day inspectors.

Inspectors for regular service may be paid by pay roll instead of voucher. Occasional inspectors to be paid on voucher, Form 89.—Article 1857, Customs Regulations of 1899, amended.

TREASURY DEPARTMENT, *May 24, 1907.*

SIR: Referring to your letter of the 2d instant, inclosing a communication from the surveyor at your port, relative to the manner of payment of the compensation of day inspectors at your port, you are informed that there appears to be no objection to the payment of regularly employed inspectors of customs by pay roll, as requested by the surveyor. As section 2642, Revised Statutes, provides that the services performed by occasional inspectors shall be particularly detailed, it would seem that where inspectors are appointed for occasional service when required, to be paid when employed, a detailed statement of the service being necessary, payment should be made on Form 89.

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Article 1857 of the Customs Regulations of 1899, which requires by inference that inspectors of customs be not paid by pay roll, is hereby amended so as to authorize their payment in that manner.

Respectfully, JAMES B. REYNOLDS,
Acting Secretary.

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28197.)

Drawback on wool.

Drawback on graded pulled wool manufactured by the Manchester Wool and Leather Company, of Manchester, N. H., with the use of imported sheepskins.—T. D. 28169 of May 21, 1907, extended, and T. D. 27451 of June 29, 1906, revoked.

TREASURY DEPARTMENT, *May 27, 1907.*

SIR: The Department's regulations of May 21, 1907 (T. D. 28169), providing for the allowance of drawback on the exportation of graded pulled wool manufactured by Winslow Brothers & Smith Company, of Norwood, Mass., from imported sheepskins by the process of washing, brushing, pulling, grading, and in some instances by the further process of scouring and carbonizing, are hereby extended, so far as applicable, to cover the exportation of similar merchandise manufactured by the Manchester Wool and Leather Company, of Manchester, N. H.

The Department's regulations of June 29, 1906 (T. D. 27451), are hereby revoked.

Respectfully, JAMES B. REYNOLDS,
(17298.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28198.)

Drawback on wool.

Drawback on graded pulled wool manufactured by Stone, Timlow & Co., of West Medford, Mass., with the use of imported sheepskins.—T. D. 28169 of May 21, 1907, extended, and T. D. 26048 of February 14, 1905, revoked.

TREASURY DEPARTMENT, *May 27, 1907.*

SIR: The Department's regulations of May 21, 1907 (T. D. 28169), providing for the allowance of drawback on graded pulled wool manufactured by Winslow Brothers & Smith Company, of Norwood, Mass., from imported sheepskins by the process of washing, brushing, pulling, grading, and in some instances by the further process of scouring and carbonizing, are hereby extended, so far as applicable, to cover the exportation of similar merchandise manufactured by Stone, Timlow & Co., of West Medford, Mass.

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The Department's regulations of February 14, 1905 (T. D. 26048), are hereby revoked.

Respectfully, JAMES B. REYNOLDS,
(23759.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Boston, Mass.*

(T. D. 28199—G. A. 6600.)

Scammony resin—Drug.

Scammony resin is dutiable under paragraph 20, tariff act of 1897, as a drug advanced in value or condition, and not under paragraph 67 as a medicinal preparation

United States General Appraisers, New York, May 23, 1907.

In the matter of protest 47892*b* of G. Martin against the assessment of duty by the collector of customs at the port of Boston.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

LUNT, *General Appraiser:* The merchandise in question is invoiced as "scammony resin." It was assessed for duty at the rate of 55 cents per pound under paragraph 67 of the tariff act of 1897 as a medicinal preparation in the preparation of which alcohol is used, and it is claimed to be dutiable under paragraph 20 of said act at one-fourth of 1 cent per pound and 10 per cent ad valorem as a drug advanced in value or condition by refining, grinding, or other process.

The issue was raised and decided adversely to the Government in an unpublished decision rendered December 6, 1901, on the authority of G. A. 5010 (T. D. 23323). On appeal to the United States circuit court for the district of Massachusetts, the decision of the Board was affirmed (T. D. 28145), and this decision was acquiesced in by the Treasury Department (T. D. 28155). Conforming to the decision of the court, we find the merchandise to be a drug advanced in value or condition, and hold it dutiable under paragraph 20, as claimed.

The protest is sustained.

(T. D. 28200—G. A. 6601.)

Rhodium.

Rhodium, a metal belonging to the platinum group, is not a metallic mineral substance in a crude state; and under the ruling in Hempstead *v.* Thomas (122 Fed. Rep., 538) is not an unwrought metal. Not being provided for elsewhere, it is dutiable under the provisions of section 6, tariff act of 1897, as an unenumerated unmanufactured article.

United States General Appraisers, New York, May 23, 1907.

In the matter of protest 226561 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of rhodium, a rare metal found in platinum ore. It was assessed with

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duty at the rate of 25 pér cent ad valorem under the provisions of paragraph 3, tariff act of 1897, as a chemical salt, and it is claimed as entitled to free entry under paragraphs 642, 631, 583, 614, or at 10 to 20 per cent under section 6, or at 20 per cent under paragraph 183 of the tariff.

The testimony shows that rhodium in association with platinum, palladium, iridium, and other metals of the "platinum group," is found in platinum ore. To obtain it from the ore it must be isolated or extracted from the other metals with which it is found in chemical combination. We find that rhodium is incapable of being wrought, and that the only theory which would permit its classification as platinum, palladium, or iridium would be by similitude, and this is prohibited so far as articles provided for in the free list are concerned. Rhodium is not a chemical salt as assessed. It is not a platinum or other metal of the platinum group for which provision is made in the free list, nor can it be classified under any of the provisions for such metals. It is not a crude metallic mineral substance, nor can it be regarded as a metal unwrought in view of the ruling in Hempstead *v.* Thomas (122 Fed. Rep., 538).

We find that it is an article unenumerated and unmanufactured, and sustain the claim in the protest that it is dutiable at 10 per cent, under the provisions of section 6 of the tariff, and modify the decision of the collector accordingly.

(T. D. 28201—G. A. 6602.)

Plush—Ribbons.

Strips of plush, about 1½ inches in width and of various lengths, cut out of the plush fabric by means of a machine, leaving serrated or scalloped edge effects, without any selvage or binder upon the edges or any treatment to prevent unraveling. *Held* to be properly dutiable at the rate of $1 dollar per pound and 15 per cent ad valorem as plush under the provisions of paragraph 386, tariff act of 1897.

United States General Appraisers, New York, May 23, 1907.

In the matter of protests 106937, etc., of F. Jacod *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise consists of certain strips of silk and cotton plush, silk chief value. They are about 1½ inches in width and of various lengths. The articles are cut from solid fabrics of plush with a machine which leaves a serrated or scalloped edge effect. They were assessed for duty at the rate of $1.50 per pound and 15 per cent ad valorem as plush ribbons, and are claimed to be properly dutiable at $1 per pound and 15 per cent ad valorem as plush, both the assessment and claim being founded on paragraph 386, tariff act of 1897, which reads:

386. Velvets, velvet or plush ribbons, chenilles, or other pile fabrics, cut or uncut, composed of silk, or of which silk is the component material of chief value, not specially provided for in this Act, one dollar and fifty cents per pound and fifteen per

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centum ad valorem; plushes, composed of silk, or of which silk is the component material of chief value, one dollar per pound and fifteen per centum ad valorem; but in no case shall the foregoing articles pay a less rate of duty than fifty per centum ad valorem.

At the hearing four witnesses were introduced, one on behalf of the importers and three on behalf of the Government.

Mr. F. Jacod, the importer in these cases, testified that the articles were bought and sold as plushes, and were known by no other name than plushes; that he had been a ribbon manufacturer for eight years prior to 1898, and that this article was not known in trade as a plush ribbon; that every ribbon had a selvage or finished edge; that that which did not have such a selvage or finished edge was not a ribbon or known as such in the trade, and that the chief use of the article was for trimming corsets.

Mr. Jonathan Bennett, called for the Government, testified that he had been in the silk business for fifteen years; that he was perfectly familiar with plushes, plush ribbons, and plush piece goods, and never saw anything like this article before; that it *might*, with propriety, be called a plush ribbon or trimming or a plush; that it was a characteristic of plush ribbons that they have a binder on the edge, and that this article did not have such a binder.

Mr. John C. Denman, called on behalf of the Government, testified that he was employed by a firm which dealt in silks, including silk ribbons, and had been in the trade for twenty or twenty-five years; that the article was known in the trade as a cut-edge plush ribbon; that he had personally bought and sold them prior to July 24, 1897; that the article was used for trimming a hat or a dress, which was its chief use; that a plush or silk ribbon had a selvage or binder; and that this article had no such selvage or binder, but a cut edge, a pressed edge.

Mr. Adolf Miller, connected for more than twelve years with a prominent firm of importers of silk goods and ribbons, testified, on behalf of the Government, that he would regard the article as a cut-edge plush ribbon; that it was not an article generally dealt in before July 24, 1897, and that he had probably never bought or sold such an article; that plush ribbons prior to 1897 would have a binder on the edge, which in some cases would extend a quarter of an inch on the surface, and that this merchandise could be used for a trimming.

The testimony, as indicated by the synopsis, discloses no general and uniform practice throughout the trade and commerce of this country attaching to this particular merchandise a trade name. From the different dictionaries are taken the following definitions of a ribbon:

Century:

A strip of fine stuff, as silk, satin, or velvet, having two selvages. * * * Ordinarily ribbons are made of widths varying from one-fourth of an inch, or perhaps even less, to 7 or 8 inches, but occasionally sash-ribbons or the like are made at greater widths.

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Standard:

A narrow strip of fine stuff, usually silk or satin, having two selvages and commonly less than 8 inches in width.

Webster:

A fillet of fine cloth, commonly of silk or satin; a narrow web of silk used for an ornament, as a badge, or for fastening some part of a female's dress.

It will be seen from the above that there is associated with a ribbon, by uniform lexicographic authority, a selvage, edge, or binder, and that that which does not have such is not in common understanding a ribbon. We think a fair consideration of the testimony in this regard conduces to the same conclusion; at least, there is nothing in this record of sufficient substance to find a trade meaning different from the common understanding as indicated by the dictionary authorities. So, while the evidence generally would indicate that the chief use of this article, and therefore its proper dutiable status, is that of a trimming, there is not sufficient evidence in the record unaffected by substantial contradiction to indicate a general and uniform trade understanding upon this point throughout the country. Under the circumstances of the present case we feel ourselves without sufficient evidence other than to find that this merchandise is a plush, and we so find.

The protests are sustained and reliquidation accordingly will follow.

(T. D. 28202—G. A. 6603.)

Waste gunny bagging or cotton tares—Rags.

1. WASTE BAGGING—"SELECTED SIDES"—"ORIGINAL GUNNY."

Large pieces of secondhand bagging suitable for patching or baling cotton, known as "selected sides," and what is known as "original gunny," consisting of pieces of old cotton bagging unassorted and indiscriminately mixed, some of which is suitable for patching cotton, is not free of duty either under paragraph 632, tariff act of 1897, as waste fit only to be converted into paper, or under paragraph 648 as rags not specially provided for.

2. TARIFF MEANING OF THE WORD "RAGS."

The word "rags" has no established and uniform commercial designation, but would seem to cover any old torn pieces, small or large, of any woven fabric which has subserved one purpose and comes into the market as secondhand material, and which is unfit for patching cotton.

3. OLD SCRAP GUNNY FREE UNDER PARAGRAPH 648, TARIFF ACT OF 1897.

Small fragments of waste bagging which are usually full of holes and irregular in size, and present the appearance of being ragged and torn, sometimes known as scrap gunny, and shown to be unfit practically for patching or baling cotton, are free of duty under paragraph 648 of said act as rags not specially provided for.—Following Train-Smith Company *v.* United States (140 Fed. Rep., 113; T. D. 26484).

United States General Appraisers, New York, May 23, 1907.

In the matter of protests 58072 *b*, etc., of Train-Smith Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The various protests contained in Schedules A and B, respectively, raise a question as to the proper

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classification of certain merchandise known indifferently as bagging, old waste bagging, old gunny bagging, and cotton tares. The articles were in all cases assessed for duty by the collector under paragraph 463 of the tariff act of 1897 as "waste not specially provided for." The protests embraced in Schedule A have all been abandoned either totally or partially, and are overruled to the extent there indicated and the collector's decision affirmed. The evidence shows satisfactorily that the goods covered by this finding are not known as "rags," and are used for other purposes than the manufacture of paper, and hence are not free of duty. As to the remainder of the merchandise, variously invoiced, the only claim insisted on by the importers is that such goods are free of duty under paragraph 648 of said act, which places on the free list "rags not specially provided for."

An analogous question was passed on by the circuit court for the southern district of New York in the case of Train-Smith Company v. United States (140 Fed. Rep., 113), and reported by the Treasury Department in T. D. 26484. The principle of this case was applied by the Board in the case of Salomon Brothers, G. A. 6562 (T. D. 28031). The decision there rendered must therefore be the authority which should govern the action of the Board of General Appraisers in the present question. It is observed by Judge Townsend in that case that the question raised was one of uncertainty, in the first place by reason of the difficulty in ascertaining the size and character of the pieces of jute bagging under consideration. It was further stated by the same judge, as follows:

The refuse pieces of gunny bags are generally sorted and divided abroad into two classes, the one comprising pieces selected because they are sufficiently large and whole and clean and smooth-edged to be used for purposes other than as mere rags for stuffing or paper stock, the other the pieces available only for the latter purposes; and that the bales in question contained pieces of the latter class; and that such pieces are regarded and denominated in common speech as rags, and in fact are rags under the dictionary definitions. The testimony that they are not commercially known as rags appears to be based on the fact that they are not generally billed or sold as rags, but it appears from the testimony of all the witnesses except one that this is because there is no general commercial designation of rags as rags, but that each kind of rag is sold under its appropriate specific name, such as cotton tares, gunny bagging, etc. * * * The whole testimony tends to show that the pieces comprised in the merchandise here in question are not of such a character as to be capable of use for patching purposes, and that, even though some of the pieces might be as large as those considered in the former case, yet that by reason of their ragged edges and torn and dirty condition they are fit only to be used as rags. In these circumstances I think it is sufficiently shown that practically all the pieces selected are rags; that where pieces are not rags under the definition as given above, they are not packed in those bales because they bring a higher price when packed to be imported as fit for other purposes; that the principle of selection by which the two classes of rags are thus separated conforms as to the class here in question to the dictionary and ordinary definition of rags, as given by one of the witnesses for the Government, as "an old, torn piece, small or large, of any woven fabric which has subserved one purpose and comes into the market as secondhand material," and that these pieces are unfit for patching bagging.

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The conclusion reached, therefore, is that the merchandise in question did not contain pieces which should be assessed for duty, and that the whole bale was free as rags.

Some of the same witnesses who testified in that case have been reexamined and have rendered their testimony at the present hearing, and we are unable to see that the evidence would justify us in coming to a different conclusion from that reached by the circuit court in the case above cited. The witnesses in the present case based their identification of the merchandise, and their description of its character and uses, partly from an examination of large portions of it and from certain marks by letters or otherwise on the invoices and by the prices of the goods. There appear to be three classes of these goods: (1) What is known as selected gunny, or selected sides, which consists of large pieces suitable for patching or baling cotton, and which command a higher price than any other grade of waste bagging; (2) what is known as original gunny, which consists of pieces of old cotton bagging unassorted, some of which are large and others small, some sound and others ragged, and which are indiscriminately mixed. This class embraces old bagging just as it comes from the cotton bales on the other side after being exported; (3) small fragments of old bagging which are usually full of holes, dirty and irregular in size, and present the appearance of being ragged and torn. This class is sometimes known as scrap gunny and is the result of sorting on the other side after the removal of the large pieces known as "selected sides." This scrap gunny is shown to be unfit practically for patching or baling cotton. While the relative prices of these kinds of goods are somewhat variable in the markets of the country whence exported, class 2 sells approximately for about 25 per cent less than class 1. and class 3 for about 25 per cent less than class 2.

The importers, as we have said, confine their claim to free entry under said paragraph 648 only to the third class above described, which, for the sake of distinction, we shall style *scrap gunny*. It is unnecessary to review in detail the conflicting testimony of the various witnesses.

The onus devolving on the importer, in our judgment, is discharged by establishing the contention that scrap gunny so called is rags within the meaning of that term as decided by the circuit court in the Train-Smith case by a fair preponderance of the evidence. In our judgment, the protests should be sustained on all the merchandise covered by the invoices in Schedule B other than that abandoned specifically in Schedule A.

In passing on these protests we have kept in mind the principle that the character of imported merchandise may be shown by witnesses familiar with the goods, testifying from the invoice descriptions and without the production of actual samples of the importations. United States *v.* Herrmann, C. C. A., second circuit, reported

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by the Treasury Department in T. D. 27981, followed in the case of Salomon Brothers, G. A. 6562 (T. D. 28031).

The collector is instructed to reliquidate the entries accordingly to the extent indicated in this opinion.

(T. D. 28203—G. A. 6604.)

Base bullion.

1. Base bullion in bars, containing gold, silver, lead, and bismuth, held dutiable at 2⅛ cents per pound, under the specific provision in paragraph 182, tariff act of 1897, for "lead or base bullion."

2. Base bullion is dutiable on the basis of the actual weight of the bars and not on the weight of the lead contained in said bullion.—G. A. 5171 (T. D. 28852) distinguished.

United States General Appraisers, New York, May 27, 1907.

In the matter of protest 248424 of Monsanto Chemical Works against the assessment of duty by the surveyor of customs at the port of St. Louis.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of so-called base lead bullion, upon which duty was assessed at the rate of 2⅛ cents per pound under the provisions of paragraph 182, tariff act of 1897. It is claimed to be dutiable properly as type metal under paragraph 190 of the tariff, either directly or by virtue of the similitude clause, and that only the weight of the lead contained in the bullion is so dutiable.

This article is described in the invoice as base lead bullion. The testimony shows that it is obtained as a result of a primary smelting process wherein lead or silver lead is used as a flux in smelting the natural ore, and thus produces the base bullion, an alloy which contains over 80 per cent lead, about 12 per cent bismuth, and the balance gold and silver. In the opinion of the circuit court of appeals *In re* Guggenheim Smelting Company (112 Fed. Rep., 517; 50 C. C. A., 374), a process precisely the same as that above referred to is described and the product is called by the witnesses "base bullion." Following this, the Board in G. A. 5171 (T. D. 23852) held base bullion in bars containing gold, silver lead, and small quantities of other metals, not to be dutiable under paragraph 166 of the tariff act of 1894, covering "lead in pigs and bars, molten and old refuse lead run into blocks and bars, and old scrap lead fit only to be remanufactured." The base bullion under consideration in that case resembles in every respect the merchandise the subject of this protest.

The provisions of the tariff act of 1897 differ from the analogous provisions in the preceding tariff act in this essential respect, paragraph 182 provides specifically for lead or base bullion. Aside from the merits of the importers' contention that the article under protest

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is type metal, directly so, or by virtue of the similitude clause of the tariff, we find from the testimony, the official sample, and the sample submitted by the importer, that the article is the base bullion for which provision is made under the present tariff act, paragraph 182. This being so, the similitude provision, section 7, of the tariff can not be invoked.

As to the merits of the importers' contention, the article is not type metal and is in no way similar thereto. In respect to material and quality the composition is entirely different; and as to use, there is no similarity at all. Under the previous tariff act the claim of the importer as to the assessment of duty on the actual weight of the lead contained in the bullion would merit consideration. Under the present act, however, in view of the specific provision for lead or base bullion, we find that the merchandise the subject of this protest is dutiable as assessed under paragraph 182, at its actual weight and without deduction for the weight of the nondutiable metals contained in such base bullion.

The protest is overruled and the decision of the surveyor affirmed.

(T. D. 28204—G. A. 6605.)

Screens.

Screens composed of wooden frames bound together in wings or sections with cords, the frames surrounding panels of cotton embroidered or appliquéed, are properly dutiable at the rate of 60 per cent ad valorem under the provisions of paragraph 339, tariff act of 1897.

United States General Appraisers, New York, May 27, 1907.

In the matter of protests 224560, etc., of Morimura Brothers against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* This merchandise consists of embroidered screens. They were, in protest 224560, assessed for duty at the rate of 60 per cent ad valorem as silk embroidered articles under the provisions of paragraph 390 and the proviso to paragraph 339, tariff act of 1897, which, in so far as relevant, read:

390. * * * Embroideries and articles embroidered by hand or machinery, * * * all of the above-named articles made of silk or of which silk is the component material of chief value, not specially provided for in this Act, * * * sixty per centum ad valorem.

339. * * * Embroideries * * * and other articles or fabrics embroidered in any manner by hand or machinery, whether with a letter, monogram, or otherwise; * * * appliquéed articles, * * * all of the foregoing, composed wholly or in chief value of flax, cotton, or other vegetable fiber, and not elsewhere specially provided for in this Act, * * * sixty per centum ad valorem: *Provided*, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed.

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In protest 224563 they were assessed as cotton embroidered articles under said paragraph 339. They are claimed to be properly dutiable, first, at the rate of 35 per cent ad valorem as "house furniture of wood" under the provisions of paragraph 208 of said act, which reads:

208. House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this Act, thirty-five per centum ad valorem.

Or at the rate of 45 per cent ad valorem as manufactures of cotton under the provisions of paragraph 322 of said act, which reads:

322. All manufactures of cotton not specially provided for in this Act, forty-five per centum ad valorem.

Or at the rate of 45 per cent ad valorem as a manufacture of vegetable fiber under the provisions of paragraph 347, which reads:

347. All manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this Act, forty-five per centum ad valorem.

Or at the rate of 50 per cent ad valorem as manufactures of silk under the provisions of paragraph 391 of said act, which, in so far as pertinent, reads:

391. All manufactures of silk, or of which silk is the component material of chief value, * * * not specially provided for in this Act, * * * fifty per centum ad valorem.

An examination of the articles discloses that they are not composed of silk. They consist of screens constructed as ordinarily, with a wood frame bound together with strings, the frame inclosing in each instance an embroidered cotton panel.

Counsel in their brief state "the Board being at liberty, in the absence of evidence, to assume that cotton is the component material of chief value," and thereby admit for the purposes of record that the articles are composed in chief value of cotton. An examination of the articles confirms this admission, and for the purposes of this record they are so regarded and we so find.

In support of the several contentions counsel have filed briefs. Their chief contention is that these articles are properly dutiable at the rate of 35 per cent ad valorem under the provisions of paragraph 208 (*supra*) as "house furniture." Incidental and necessary to this contention is the one that, inasmuch as the articles are assumed to be house furniture, the proviso to paragraph 339 does not extend thereto.

The cotton panels, which comprise about 95 per cent of the surface of the articles and are admittedly the component material of chief value, are embroidered. Counsel, however, insist that though this

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portion of the article is its component of chief value, nevertheless, being surrounded by the wood, and the article being, as they claim, one of house furniture, the admitted major becomes the minor consideration, and that in its new character as house furniture the cotton panels are of secondary consideration.

In our opinion, and we think in the undoubtedly well-settled opinion of the courts, the proviso to paragraph 339 extends to every schedule in the tariff act unless there is specific language to expressly withdraw the article from the effect of that provision. In this view it may be admitted, for the purpose of argument, that the articles are house furniture; nevertheless, if embroidered, they are subject to the proviso to paragraph 339. There appears to us no merit in the contention in this case, that that which constitutes the component material of chief value can in anywise be regarded as of minor consideration for dutiable purposes. Regardless of what portion may be first constructed, and regardless of the order of the putting together of the component materials of an article, if, when the article is completed, there appears thereupon embroidery, it would seem to be a matter of indifference at what time in the course of construction this embroidery was done or upon what portion of the entire composition it was placed.

The authorities as to whether or not the proviso to paragraph 339 extends to such articles as may be embroidered and otherwise dutiable under the provisions of paragraph 208 seem abundant. Counsel have cited G. A. 5235 (T. D. 24073), and, while admitting that that decision is at variance with the weight of authority as enunciated by the courts, claim it to be of superior logic. That decision of the Board has been affirmed by the United States circuit court for the southern district of California by consent. While we adhere to the conclusion reached in that case, it must not be overlooked that that conclusion was expressly rested upon the broad language of paragraph 427 of the act of 1897, it being held that such *expressly* took the case out of the proviso to 339.

We think the courts have passed upon this point directly or impliedly so often that the issue is settled beyond dispute. The United States circuit court for the district of Maryland, in the case of Carter, Webster & Co. *v.* United States, passed upon this point. On appeal to the circuit court of appeals for the fourth circuit that court, in Carter *v.* United States (143 Fed. Rep., 256; T. D. 27135), said:

> It is familiar doctrine that a proviso is to be strictly construed, and that it should be confined to what precedes it, unless it clearly appears to have been intended to apply to other matters also. Endlich, Interpretation of Statutes (sec. 186); Sutherland Trust Company *v.* Hudson (68 Fed. Rep., 760). But it is equally fundamental that when by the terms of the proviso it manifestly appears it was intended to apply generally to the entire act, it must be so treated and construed.

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In Georgia Railroad and Banking Company *v.* Smith (128 U. S., 174) it was said:

The general purpose of a proviso is to except the clause covered by it from the provisions of a statute, or to qualify the operation of the statute. But the word "provided" is often used as a conjunction to an independent paragraph.

The clear general purpose of this clause is to provide, *by reference*, a *minimum duty* upon wearing apparel and other articles or textile fabrics when embroidered. The purpose of the paragraph to which it was attached was to provide a duty upon vegetable fiber embroideries, etc., and wearing apparel, etc., composed wholly or in chief value of vegetable fiber, embroidered, and not otherwise specially provided for. That the proviso can not be limited to the articles named in the body of the paragraph is, we think, apparent upon a careful reading of both. It is to be observed that the "wearing apparel" and other "articles or fabric" mentioned in the body of the paragraph are confined to such as are "composed wholly or in chief value of flax, cotton or other vegetable fiber and not elsewhere specially provided for in this Act." But the language of the proviso is not thus restricted; it enacts that "no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than imposed" upon embroideries of the material used in the embroidery. This manifestly extends far beyond the body of the paragraph and applies to textile fabrics of whatever material composed, when embroidered.

On application to the Supreme Court of the United States for writ of certiorari in that case the writ was denied. Carter *v.* United States (202 U. S., 617; T. D. 27333). By this denial the Supreme Court added its approval to the doctrine enunciated in that case.

The same doctrine was held in the case of Thomas *v.* Wanamaker (129 Fed. Rep., 92; T. D. 25155).

In the more recent case of Lichtenstein Millinery Company *v.* United States, decided February 4, 1907, by the circuit court for the southern district of New York (T. D. 27919), precisely similar merchandise was before the court for consideration, and the court said:

The merchandise, consisting of a three panel folding screen, 5 feet and 10 inches high, the frame being of wood, carved and gilded, and being about 6 inches wide, the panels being of silk, embroidered and having inset a printed picture covered by a glass frame, was assessed for duty as a silk-embroidered article at the rate of 60 per cent ad valorem under the provisions of paragraph 390 of the existing tariff act. The importer claims the screen should be held dutiable at 35 per cent ad valorem under paragraph 208 as an article composed in chief value of wood.

The silk embroidery upon the panels of the screen unquestionably enhances its value to an appreciable extent; and accordingly the assessment would seem to have been proper by virtue of the proviso contained in paragraph 339, even though wood was the component material of chief value. The importer contends that paragraph 390 refers only to such articles as are embraced *ejusdem generis* with laces, lace edgings, insertings, galloons, chiffon, or other flouncings and trimmings, and that the screen is not in any way *ejusdem generis* with the articles mentioned. I am satisfied that the doctrine of *noscitur a sociis* does not apply, and that the case is controlled by the principles enunciated in United States *v.* Altman (107 Fed. Rep., 15) and Carter, Webster & Co. *v.* United States (137 Fed. Rep., 978; T. D. 26220). Such appears also to have been the opinion of the Board.

We think this completely disposes of the incidental contention made that the proviso to paragraph 339 does not extend beyond the purview of that paragraph, and likewise of the contention that these articles are properly dutiable as house furniture.

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It may be added, inasmuch as counsel have elaborated upon the last point in their briefs, that the provisions of paragraph 208 are perfectly harmonious, that there is no surplusage therein, and that each applies to a particular kind of merchandise.

It must not be lost sight of in construing tariff provisions that what at first might appear to be tautological arises out of a superabundance of care lest the particular duty intended to be levied may be avoided by reason of the more specific language of some other paragraph.

Paragraph 208 provides for house furniture of wood, manufactures of wood, and manufactures of which wood is the component material of chief value. One of the provisions being for "house furniture of wood," it follows that furniture not wholly or in chief value of wood is not included therewithin.

"House furniture of wood" embraces all furniture which is substantially wholly of wood.

"Manufactures of wood" embraces all articles substantially wholly of wood. It includes not only house furniture but every other article made substantially wholly of wood.

"Manufactures in chief value of wood" includes all articles in chief value of wood, extending to some but not all manufactures of wood, and including all house furniture of wood, but is less specific than the last expression and includes many other articles.

Each of these terms is different in scope, and while one may embrace all the articles covered by another, each under the law is of different specific significance when compared with other provisions of the tariff. In order to determine that any particular language of any paragraph is superfluous, we must look not alone to the language of the particular paragraph, but to the relative language of every cognate paragraph of the tariff act, which counsel have not done. No sound conclusion as to whether or not language is superfluous can be reached until such comparison is exhausted, and from the numerous instances which might be presented by the numerous cognate provisions of the act as compared to paragraph 208, the Board is not prepared to estop itself in future controversies by a premature conclusion in this case which in itself would not be determinative of the case.

In any event, the fact that counsel or the Board can not find merchandise dutiable under a particular paragraph does not warrant a strained construction in an effort to discover such, or justify the inclusion with a paragraph of that which otherwise would not be so included.

We are of the opinion from the decision cited and from the record in this case that this merchandise is otherwise dutiable. We find that the articles are composed in chief value of cotton; that this

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cotton is not countable; and that the articles are embroidered in the one case and appliquéed in the other. In protest 224563 the superimposed work is of doubtful character. It is at least clearly appliquéed, and we so find. It is possibly also in part an embroidery of substantial size. Ornamental birds made of needlework are sewn or appliquéed to and upon the cotton.

We hold the merchandise is properly dutiable at the rate of 60 per cent ad valorem under the provisions of paragraph 339.

The assessment for duty having been made at that rate, the protest is overruled.

(T. D. 28205.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15503.—Imitation Precious Stones.—Protest 226849 of G. Hirsch's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 21, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6380 (T. D. 27420) the goods were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897, as claimed by the importers.

No. 15504.—Sea Moss—Papyrus Flowers.—Protest 229760 of Decorative Plant Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 21, 1907. Opinion by McClelland, G. A.

1. So-called papyrus flowers, classified under paragraph 425, tariff act of 1897, relating to ornamental flowers, etc., were claimed to be dutiable under paragraph 251, relating to natural flowers preserved, etc. These articles consist of narrow palm leaves treated and dyed, about 12 inches long, in the center and at the base of which dried and colored seeds are placed, forming a spray when tied with rubber band and attached to wood handle about 2 feet long. Palm leaf is the component of chief value. Assessment affirmed. Note G. A. 5800 (T. D. 25630) and Kreshower *v.* United States (T. D. 27826).

2. Protest sustained as to sea moss on the authority of G. A. 6464 (T. D. 27670).

No. 15505.—Ornamental Leaves.—Protest 161285 of H. Bayersdorfer & Co. against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, May 21, 1907. Opinion by McClelland, G. A.

The protest related to statice wreaths classified under paragraph 251, tariff act of 1897, relating to natural flowers preserved, and to various other goods classified under paragraph 425 as ornamental leaves. Assessment affirmed. Kreshower *v.* United States (T. D. 27826) followed.

No. 15506.—Protests Insufficient.—Protests 27057 *h*, etc., of Arnold, Constable & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 21, 1907. Opinion by Fischer, G. A.

The protests were held insufficient on the authority of G. A. 6472 (T. D. 27684) and G. A. 6588 (T. D. 28159). General Appraiser De Vries dissented for reasons set forth in his opinion in the case last cited.

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No. 15507.—PROTEST INSUFFICIENT.—Protest 144075 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15506 (*supra*).

No. 15508.—RENAISSANCE LACE.—Protest 225746 of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 21, 1907. Opinion by Howell, G. A.

So-called Renaissance lace articles were held to have been properly classified under paragraph 339, tariff act of 1897, relating to lace goods. Protest overruled. Note G. A. 6386 (T. D. 27441) and United States *v.* Van Blankensteyn (91 Fed. Rep., 977).

No. 15509.—MANUFACTURES OF COTTON.—Protests 242501, etc., of Rice-Stix Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 21, 1907. Opinion by De Vries, G. A.

Goods classified as composed in chief value of flax were held dutiable as manufactures of cotton under paragraph 322, tariff act of 1897, as claimed by the importers.

No. 15510.—SUGAR WAFERS.—Protest 196993 of G. C. Cochlan against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 3, May 21, 1907. Opinion by Waite, G. A.

Protest sustained on the authority of United States *v.* Meadows (T. D. 28004), relating to sugar wafers.

No. 15511.—PROTESTS FILED TOO LATE.—Protests 229065, etc., of Cerecedo Hermanos & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, May 21, 1907. Opinion by Somerville, G. A.

Protests dismissed because not filed within the time prescribed by law.

No. 15512.—HOUSEHOLD EFFECTS—COLT.—Protest 218157 of T. R. Briscoe against the assessment of duty by the collector of customs at the port of Rochester. Before Board 3, May 21, 1907. Opinion by Hay, G. A.

A yearling colt bred and raised by the importer and intended to be used by him and his family for general purposes was held free of duty under paragraph 504 of the tariff act of 1897, relating to household effects of families from foreign countries. Sandow *v.* United States (84 Fed. Rep., 146) followed.

No. 15513.—PROTESTS UNSUPPORTED.—Protest 240275 of W. B. Quaintance and protest 227758 of Remy, Schmidt & Pleissner against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 21, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 15514.—PROTESTS UNSUPPORTED.—Protests 218231, etc., of Horstmann, Von Hein & Co. *et al.* Opinion by Howell, G. A.

Same as No. 15513 (*supra*).

No. 15515.—PROTEST UNSUPPORTED.—Protest 243893 of Scott & West. Before Board 3. Opinion by Somerville, G. A.

Same as No. 15513 (*supra*).

No. 15516.—PROTEST UNSUPPORTED.—Protest 243786 of Alexander Murphy & Co. Before Board 3. Opinion by Hay, G. A.

Same as No. 15513 (*supra*).

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No. 15517.—Wool Wearing Apparel.—Protest 246645 of Rosenblum & Sentner against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinion by Lunt, G. A.

The protest related to hat forms, which the Board held to have been properly classified as wool wearing apparel.

No. 15518.—Pyroxylin Smokers' Articles.—Protests 248307, etc., of Schrader & Ehlers and protest 248741 of B. Weiss against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinions by Lunt, G. A.

Protests sustained on the authority of G. A. 6538 (T. D. 27889), relating to pyroxylin smokers' articles.

No. 15519.—Crude Sulphide of Antimony.—Protest 247243 of Meyer Brothers Drug Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 22, 1907. Opinion by Lunt, G. A.

Merchandise invoiced as ground antimony sulphide was held to be free of duty under paragraph 476 of the tariff act of 1897, relating to "antimony ore, crude sulphide of." G. A. 5440 (T. D. 24718) followed.

No. 15520.—Jewelry—Charms.—Protests 246378, etc., of L. W. Levy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinion by Sharretts, G. A.

Silver, gilt, and enamel charms in the form of miniature wagons, tops, etc., were held to have been properly classified as jewelry under paragraph 434 of the tariff act of 1897. Protest 246378 was abandoned.

No. 15521.—Entireties—Glass and Metal Stands.—Protest 248914 of Lazarus, Rosenfeld & Lehmann against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinion by Sharretts, G. A.

The protest related to flower or cake stands composed of metal and colored glass, metal the component of chief value. The Board sustained the importers' contention that the fact that the glass and metal parts were separately itemized on the invoice and separately packed did not operate to exclude them from admission as entireties. The goods were held dutiable as manufactures of metal under paragraph 198 of the tariff act of 1897, as claimed in the protest.

No. 15522.—Glass Vials.—Protest 251485 of F. W. Braun Company against the assessment of duty by the surveyor of customs at the port of Los Angeles. Before Board 1, May 22, 1907. Opinion by Sharretts, G. A.

The protest related to filled glass vials, which were held to have been properly classified at 50 cents per gross under paragraph 99 of the tariff act of 1897.

No. 15523.—Silk Fabrics.—Protest 248101 of Heinsheimer Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 22, 1907. Opinion by Howell, G. A.

The protest related to silk fabrics classified as piece dyed, under paragraph 387 of the tariff act of 1897, when they should have been classified under the same paragraph as boiled off, as claimed by the importers.

No. 15524.—Dirt in Nuts.—Protest 242142 of Habicht, Brown & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 22, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

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No. 15525.—DUTIABLE WEIGHT OF GOODS IN BOND.—Protest 192309 of Hills Brothers Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 22, 1907. Opinion by Somerville, G. A.

Protest overruled on authority of United States *v.* Falk (T. D. 27832), relating to the dutiable weight of goods entered for warehouse.

No. 15526.—WHISKY WITHDRAWAL—GAUGE.—Protests 202180, etc., of Paul Gelpi & Sons against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, May 22, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6597 (T. D. 28178), relating to the gauge of whisky withdrawn from warehouse.

No. 15527.—BALATA.—Protest 244624 of Middleton & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 22, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of Earle *v.* United States (T. D. 27977), relating to balata.

No. 15528.—CIGAR LIGHTERS—SMOKERS' ARTICLES.—Protest 231213 of Reiff & Bethke against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 22, 1907.

Goods invoiced as gas lighters, which were classified as smokers' articles under paragraph 459 of the tariff act of 1897, were claimed to be dutiable as manufactures of metal or wire under paragraph 193 or 137.

HAY, *General Appraiser:* * * * The article consists of a metal tube containing a wick and appliances connected therewith, covered with a cap, which is removed to produce a light, substantially the same kind of an article as was passed upon in Steinreich's case. Abstract 13785 (T. D. 27785), and there held to be dutiable as a smoker's article. In the case under consideration the importer testified that the article as imported will not produce a light, and the contention is made that therefore it is useless for smokers. The testimony taken in connection with the sample fails we think to differentiate the articles from that which was the subject of the Board's decision in Steinreich's case (*supra*), following which the protest is overruled and the action of the collector affirmed.

No. 15529.—PROTESTS ABANDONED.—Protest 247632 of Victor Koechl & Co. and protest 247888 of Ying Chong against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinions by Lunt, G. A.

Protests abandoned; overruled.

No. 15530.—PROTESTS UNSUPPORTED.—Protest 245618 of Veit, Son & Co. and protest 246376 of Kronfeld, Saunders & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 22, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 15531.—PROTEST UNSUPPORTED.—Protest 234789 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15530 (*supra*).

No. 15532.—PROTEST UNSUPPORTED.—Protest 248229 of J. H. Bishop Company against the assessment of duty by the collector of customs at the port of Detroit. Before Board 1, May 22, 1907. Opinion by Lunt, G. A.

Same as No. 15530 (*supra*).

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No. 15533.—PROTEST UNSUPPORTED.—Protest 248209 of Central Vermont Railway Company against the assessment of duty by the collector of customs at the port of Burlington. Opinion by Lunt, G. A.

Same as No. 15530 (*supra*).

No. 15534.—DRUG ADVANCED IN CONDITION—HERBS.—Protest 243830 of A. Valsecchi & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 23, 1907. Opinion by Lunt, G. A.

The protest related to a mixture of ground herbs, which the Board found could not in its imported condition be applied as a remedy for illness. The classification of the article as a medicinal preparation under paragraph 68, tariff act of 1897, was reversed and the importers' contention that it is dutiable under paragraph 20 as a drug advanced in value was sustained. Note United States *v.* Martin (T. D. 28145); United States *v.* Merck (136 Fed. Rep., 817; T. D. 25993); Cowl *v.* United States (124 Fed. Rep., 475).

No. 15535.—BEADED ARTICLES—SILK TRIMMINGS.—Protest 232102 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 23, 1907. Opinion by Sharretts. G. A.

The goods were held to have been properly classified as silk trimmings and beaded articles under paragraphs 390 and 408, tariff act of 1897.

No. 15536.—LACE NECKWEAR.—Protests 11625 *h*, etc., of Einstein, Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 23, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Goldenberg *v.* United States (T. D. 27894), relating to lace neckwear.

No. 15537.—PROTEST INSUFFICIENT.—Protest 136772 of S. Melon & Co. against the assessment of duty by the collector of customs at the port of San Juan. May 23, 1907.

Same as No. 15506 (*supra*).

No. 15538.—ANTIPASTO.—Protest 236958 of E. M. Gualdi & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

Protest sustained on the authority of G. A. 6535 (T. D. 27886), relating to antipasto.

No. 15539.—SLICED MUSHROOMS.—Protest 200313 of H. Kraut against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

Zanmati *v.* United States (T. D. 28054) followed, relating to mushrooms sliced and dried.

No. 15540.—SLICED MUSHROOMS—MUSHROOMS IN TINS.—Protests 187095 of La Manna, Azema & Farnan *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

The protests were sustained in so far as they made contentions in harmony with Choy Chong Woh *v.* United States (T. D. 28053) and Zanmati *v.* United States (T. D. 28054), relating, respectively, to sliced mushrooms and to mushrooms in tins. The further contention that duties were assessed upon an excessive weight was overruled, not being satisfactorily supported by the evidence.

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No. 15541.—SUGAR WAFERS.—Protests 150286, etc., of Meyer & Lange *et al.* against the assessment of duty by the collector of customs at the port of New York. May 23, 1907.

Same as No. 15510 (*supra*).

No. 15542. —SUGAR WAFERS.—Protest 225756 of Yerxa Brothers Company against the assessment of duty by the collector of customs at the port of Minneapolis. May 23, 1907.

Same as No. 15510 (*supra*).

No. 15543.—MUSHROOMS IN TINS.—Protests 218408, etc., of K. C. Tank & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

Choy Chong Woh & Co. *v.* United States (T. D. 28053) followed, relating to mushrooms in tins.

No. 15544.—DRIED SEAWEED.—Protest 227616 of Demeto & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

The protest related to several varieties of Japanese seaweed, shown by the evidence to have been prepared by drying only, except one kind invoiced as shiroita, which was said to have been shaved and dried. The importers contended that the merchandise had been improperly classified under paragraph 241 of the tariff act of 1897 as prepared or preserved vegetables. and should have been classified as free of duty under paragraph 617, relating to seaweed, crude or unmanufactured. Protests sustained on the authority of G. A. 5253 (T. D. 24151) and Zanmati *v.* United States (T. D. 28054).

No. 15545.—CHURCH STATUARY.—Protest 244115 of F. H. Shallus against assessment of duty by the collector of customs at the port of Baltimore. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

The merchandise was held free of duty under paragraph 649, tariff act of 1897, as church statuary.

No. 15546.—MORTADELLO—SAUSAGE.—Protest 243623 of American Express Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

So-called mortadello, classified as prepared meat under paragraph 275, tariff act of 1897, was claimed to be free of duty under paragraph 655 as bologna sausage. Protest overruled.

No. 15547.—BUTTON MOLDS.—Protest 243762 of Hormann, Schutte & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 23, 1907. Opinion by Somerville, G. A.

The articles in controversy were held to have been properly classified as button molds of metal, on the authority of G. A. 6561 (T. D. 28019). Protest overruled.

No. 15548.—PROTESTS UNSUPPORTED.—Protests 78811*f*, etc., of Jas. P. Smith & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 23, 1907. Opinion by Waite, G. A.

Protests overruled for want of merit.

No. 15549.—PROTESTS UNSUPPORTED.—Protests 251497, etc., of Kwong On & Co. *et al.* against the assessment of duty by the collector of customs at the port of Los Angeles.

Same as No. 15548 (*supra*).

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No. 15550.—PROTEST UNSUPPORTED.—Protest 243803 of G. W. Sheldon & Co. Opinion by Somerville, G. A.

Same as No. 15548 (*supra*).

No. 15551.—PROTEST UNSUPPORTED.—Protest 282264 of Armstrong Furniture Company against the assessment of duty by the surveyor of customs at the port of Memphis. Opinion by Hay, G. A.

Same as No. 15548 (*supra*).

No. 15552.—PROTEST UNSUPPORTED.—Protest 244996 of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by Hay, G. A.

Same as No. 15548 (*supra*).

TREASURY DEPARTMENT, *May 29, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 28206.)

Rose cuttings.

UNITED STATES *v.* AMERICAN EXPRESS COMPANY.

U. S. Circuit Court, Western District of New York. May 9, 1907. Suit 1800.

ROSE CUTTINGS—"PLANTS."

Rose cuttings that have been put in sand in preparation for shipment, but have never in fact been in soil, are not dutiable as "rose plants" under paragraph 252, tariff act of 1897, but as "cuttings of * * * shrubs, plants, * * * commonly known as nursery or greenhouse stock," under the same paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see Abstract 9655 (T. D. 26997), sustaining the importers' protest against the assessment of duty by the collector of customs at the port of Buffalo. Note T. D. 27012, directing the application for review.

Lyman M. Bass, United States attorney, and *Donald Bain,* for the United States.

HAZEL, *District Judge:* The questions submitted arise upon a protest filed with the collector by the importer, who claims that the articles in question are rose cuttings and dutiable at 25 per cent ad valorem under paragraph 252 of the present tariff act. The importation was returned by the appraiser as rose plants and assessed for duty at 2½ cents each.

I have read the testimony, together with the opinion of the Board and the former decision of the Board in G. A. 5645 (T. D. 25211), and I think the Board correctly decided upon the evidence presented that the importation consists either of cuttings of shrubs or "cuttings of * * * plants * * * commonly known as nursery or greenhouse stock," and as such is dutiable at 25 per cent ad valorem. It appears by the evidence of Mr. Carey, witness for the protestant, that the cuttings in question are put in sand in preparation for shipment, but that they have never in fact been in soil. The provisions of paragraph 252 are not absolutely clear, but the omission of Congress to specifically mention cuttings or plants of the hybrid rose persuasively indicates, I think, that a broad interpretation of said paragraph was intended. I concur in the conclusions and reasoning of the Board, whose decision is hereby sustained.

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(T. D. 28207.)

Addition on entry.

WOODRUFF *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. January 13, 1896; rehearing June 16, 1896. Suit 1078.

1. DUTIABLE VALUE—ADDITION ON ENTRY—DEFINITENESS OF ADDITION.

In reference to section 7, customs administrative act of 1890, providing that importers may at the time of entry add to the invoice value to raise it to the actual market value of the merchandise at the time of exportation, *Held* (1) that such addition should be stated in the entry in such definite terms that its amount can be ascertained by the customs officers, and (2) that, where importers on entry noted that a certain sum should be added, less certain charges unspecified in amount, the addition should be considered as of the gross sum thus stated, reduced, however, by the amount of such charges as were officially known to the customs officers.

2. PROTEST—SUFFICIENCY.

Importers contended in their protest that the collector should have assessed duty on the basis of the appraised value of the goods, and that the exaction of duty on the basis of a gross sum added to the invoice value on entry to make market value was illegal. *Held* that under section 14, customs administrative act of 1890, the protest was sufficiently distinct and specific as to raise the question of whether a deduction for nondutiable charges should be made from said gross sum.

3. JUDGMENT—REFORMATION.

A judgment may be reformed, regardless of the expiration of the term at which it was rendered, when necessary to correct computations made under it.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision partly adverse to the Government.]

These proceedings were brought by A. J. Woodruff & Co. to review an unpublished decision of the Board rendered July 9, 1892, which affirmed the assessment of duty by the collector of customs at the port of New York. The opinion filed by the Board reads as follows:

SOMERVILLE, *General Appraiser:* We find the goods to be of the description stated in the invoice and other papers in the case. The additions made by the importers in their entry to make market value we find were voluntarily made and were not made under threats or compulsion. The duties were properly assessed on the entered value under the provisions of section 7 of the customs administrative act. G. A. 183 (T. D. 10533). The collector's decision must be affirmed.

Stanley, Clarke & Smith (*Stephen G. Clarke* of counsel), for the importers.

Max J. Kohler, assistant United States attorney, for the United States.

WHEELER, *District Judge:* This importation, of antiquities, appears to have been purchased abroad to be delivered at the purchaser's residence in New York, free of all charges, for 14,500 francs. An invoice furnished to the purchaser showed this sum in gross; the consular invoice showed the prices to amount to 6,900 francs. To avoid penal duties, the purchaser, in making the entry, attached his invoice to the consular invoice with this indorsement:

Add to make market value 7,100 francs, to agree with private invoice attached, which invoice, however, is expressly inclusive of all charges to the delivery of the goods at the private residence of the consignee.

The articles were appraised at 10,150 francs; but duties were assessed upon them at 14,000 francs as the entered value.

Compulsion by duress of goods, about adding the private invoice to the entry, is claimed, but was not found by the Board of General Appraisers; and no reason appears for disturbing their finding in this respect.

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The purchaser had the right to "make such addition in the entry to the cost or value given in the invoice * * * as in his opinion" might "raise the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported." The collector was required by law to cause the articles to be appraised for dutiable value, and to add penal duties if the appraised value should exceed by more than 10 per cent the entered value; but the duty could not, "however, be assessed * * * upon an amount less than the invoice or entered value," nor below the appraised value. (Sec. 7, customs administrative act of 1890.) The invoice value was, according to the appraisal, a gross undervaluation; and penal duties would accrue unless prevented by the entered value. This value, to be an entered value, would have to be entered in such definite terms that the amount of it could be ascertained by the custom-house officers. An entry of such an addition, without naming the amount, as would make a sum equal to what the appraised value should be, or of an indefinite sum in any mode, would not comply with the statute. This addition was of 7,100 francs, subject to reduction for charges, which would include import duties, for bringing the goods to the importer's residence. If these charges had been specified in amount, the addition would have been of 7,100 francs less such charges; and such charges as would be definitely known by the custom-house officers in their official capacity might be considered as so specified. Shipping and insurance charges would not appear to be so officially known; how the appraiser knew them is not shown. Lawful duties at the regular rate would be exactly ascertainable on the appraisal; and they appear to have been so ascertained at $1,559.40 by the appraiser. This was a definite sum which might be added to but would not be less, and could safely be deducted from 7,100 francs in ascertaining the amount to be added to 6,900 francs for making market value. This would probably leave a sum so small as when added to the invoice value would leave it much more than 10 per cent below the appraised value. Then 2 per cent of the appraised value on each 1 per cent of this excess would have to be added as a penal duty to the regular duties computed on the appraised value to make the total duty. This penal duty could not be ascertained till after the deduction from 7,100 francs should be made, and would be too remote and uncertain to be used for making any further reduction by. Neither protest points to a total duty so ascertained as the proper duty, but one of them sets forth a claim that duty should only be assessed upon the value of the goods as returned by the appraiser, and that the—

> Exaction of duty on 14,000 francs, without regard to the notation * * * upon the invoice and entry that the addition to make market value, 7,100 francs, included all freights, customs duty, and charges to the time of delivery * * * at the residence of the owner, is illegal.

The customs administrative act requires only that the protest shall set forth "distinctly and specifically" the "objections" to the decision. (Sec. 14.) This protest seems to well set forth an objection to disregarding the qualifications made to the addition of 7,100 francs for entered value.

The amount directed to be added to make market value was not 7,100 francs, but that sum less the charges which the customs officers would officially have known of; and this amount of regular duty on the appraised value they would so know of and know that it could not be lessened, and might safely be deducted from the 7,100 francs in finding the sum to be added; and that seems to be the only one. The qualification, so far as it could be carried out, was as much a part of the addition as the sum named to be qualified. As it could have been carried out to this extent, and was not, and as that omission was directly protested against, the judgment should, as now considered, be reversed.

Judgment reversed.

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ON REHEARING.

The consular invoice value was 6,900 francs, and the appraised value 10,150 francs. The importer added 7,100 francs, "inclusive of all charges," to make market value, and duties were assessed upon 14,000 francs as the entered value. On appeal, in last term, this court entered judgment that to the invoice value of 6,900 francs should be added to make market value 7,100 francs, "after $1,559.40, reduced to francs, have been deducted from said 7,100 francs," and for penal duties, if this should be more than 10 per cent below the appraised value. This $1,559.40 makes 8,079.78 francs, which more than exhausts the 7,100 francs and leaves nothing to add for market value. Now, a computation has been submitted, in effect subtracting the excess, 979.78 francs, from the consular invoice value, leaving 5,920.22 francs as the entered value, which is 71 per cent below the appraised value, making the penal duty $2,781.78. The importers move for a reformation of the judgment, which is objected to because made after the term. Although generally the judgments of the Federal courts must stand as left at the term when rendered, as section 15 of the customs administrative act provides that they shall be deemed always open for its purposes, perhaps judgments under that act can be corrected at any time before they are fully made up and entered. (26 Stat., 138.) But this judgment, so far as made up, seems to be correct and needs only to be followed in making computations under it, which may always be done until it is complete. That the $1,559.40 charges was greater than the 7,100 francs from which it was directed to be deducted was not noticed, and the direction was superfluous and should not have been made; but it did not direct that the excess should be subtracted from the sum to which the expected remainder was to be added. The importer did not by his attempt succeed in adding anything to the invoice value to make market value; and he did not, nor attempt to, take anything from it. The act provides that the duty shall not be assessed upon an amount less than the invoice value, and the collector had no right to lesson that. Section 7, customs administrative act of 1890 (26 Stat., 135). The duties should therefore, under the judgment entered, be computed upon the appraised value, with such penal duties as may arise upon the actual difference between that and 6,900 francs, the consular invoice value, and upon no more.

NOTE.—This decision was acquiesced in by the Government (T. D. 17031). An appeal by the importers to the circuit court of appeals, second circuit, was dismissed for failure to docket (89 Fed. Rep., 1021).

(T. D. 28208.)

Tooth soap.

UNITED STATES *v.* PARK.

U. S. Circuit Court, Southern District of New York. May 24, 1907. Suit 4827.

TOOTH SOAP—TOILET SOAP—PREPARATION FOR THE TEETH.

So-called carbolic tooth soap, used as an application for the teeth, is more specifically enumerated in paragraph 72, tariff act of 1897, relating to "all descriptions of toilet soap," than in paragraph 70, relating to "preparations used as applications to the * * * teeth, such as * * * dentifrices, * * * not specially provided for."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6518 (T. D. 27845), sustaining the protest of Park & Tilford against the assessment of duty by the collector of customs at the port of New York.

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The merchandise in controversy, which was invoiced as carbolic tooth soap, was classified by the collector under the provision in paragraph 70, tariff act of 1897, for "preparations used as applications to the * * * teeth, * * * such as * * * dentifrices, pastes, * * * and not specially provided for." The importers' contention, which the Board sustained, was that this tooth soap was more specifically enumerated in paragraph 72, which relates to "all descriptions of toilet soap."

J. Osgood Nichols, assistant United States attorney, for the United States.

B. A. Levett, for the importers.

PLATT, *District Judge:* Decision affirmed.

(T. D. 28209.)

Sufficiency of petition.

VANDEGRIFT *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 14, 1907. Suit 4265.

1. PETITION FOR REVIEW OF DECISION OF GENERAL APPRAISERS—SUFFICIENCY.

An importer in applying for review of a decision of the Board of General Appraisers, under section 15, customs administrative act of 1890, failed to specify in his assignment of errors the provision of law under which his goods should have been classified. *Held* that the petition did not meet the requirement of said section of containing "a concise statement of the errors of law and fact complained of."

2. SAME—SAME—GENERAL ASSIGNMENT—REFERENCE TO PROTEST.

An importer in his petition for review of a decision of the Board of General Appraisers, under section 15, customs administrative act of 1890, made several specific assignments of error and a general assignment that "the protest should be sustained and the collector's decision reversed," but failed to refer to the provision under which his merchandise should have been classified. *Held* that this omission was not remedied by the fact that the correct contention had been made in his protest passed on by the Board, nor by making said general assignment.

3. SAME—AMENDMENT.

Assignments of error can not be amended in a case pending in the circuit court on review of a decision of the Board of General Appraisers, in which the period has expired for taking further evidence under section 15, customs administrative act of 1890.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see Abstract 11345 (T. D. 27363), affirming the assessment of duty by the collector of customs at the port of New York on merchandise entered by F. B. Vandegrift & Co.

The Board's opinion reads as follows:

HAY, *General Appraiser:* The merchandise in this case was invoiced as balata and returned by the appraiser as a nonenumerated unmanufactured article. Duty was assessed thereon at 10 per cent ad valorem under the provisions of section 6, tariff act of 1897. The protest claims that it is exempt from duty under paragraph 470, 548, 570, 579, or 617.

The case was submitted without testimony, and we have nothing before us but the invoice description of the merchandise in question, which does not necessarily bring it within the purview of any of the paragraphs claimed. See G. A. 6164 (T. D. 26751).

The protest is overruled without affirming the decision of the collector.

Since this decision crude balata has been held free of duty under paragraph 579 of said act as crude india rubber. Earle *v.* United States (T. D. 27977). The only question presented to the court on argument was whether the importers, owing to the terms of their petition for review of the Board's decision, were in position to have their case decided in accordance with the Earle decision. In this petition the only

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specific assignments of error related to provisions other than said paragraph 579. These were followed by a general assignment, reading:

IV. That the protest should be sustained and the collector's action reversed.

Counsel for the importers argued that inasmuch as their protest had contained the correct contention their petition became sufficient by reason of its assigning "that the protest should be sustained." The Government maintained the contrary, citing the decision of the circuit court of appeals, first circuit, in United States *v.* Brown (127 Fed. Rep., 793; T. D. 25074), in which it was held that a general assignment of error following specific assignments should be construed with reference to the specific ones and not as raising unrelated questions, and that assignments general in form were not in compliance with the provision in section 15, customs administrative act of 1890, prescribing that petitions for review of decisions of the Board of General Appraisers shall consist of "a concise statement of the errors of law and fact complained of." It was further argued in behalf of the Government that, inasmuch as the importers had based their assignment of errors on a selection of the contentions made in their protest, the omission of any other contention was tantamount to a waiver of it.

Counsel for the importers also urged that the petition could legally be amended and the omission corrected. But the Government objected that this was not permissible, as the law contains no provision for such amendment, and particularly that amendment should not be allowed after the order for further evidence under said section 15 had expired and the case had been brought to argument on the papers in their original form.

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

PLATT, *District Judge:* Decision affirmed.

(T. D. 28210.)

TREASURY DEPARTMENT, *May 28, 1907.*

The appended memorandum (supplemental to T. D. 28008) of recent court decisions in customs cases, not previously included in Treasury Decisions, is published for the information of officers of the customs and others concerned.

JAMES B. REYNOLDS, *Assistant Secretary.*

Suit 1672.—OLEIC ACID.—Edward Hill's Sons & Co. *v.* United States. United States circuit court, district of Massachusetts, December 26, 1906. No. 57. On application for review of a decision of the Board of United States General Appraisers.

Dismissed by consent. Same questions as in Edward Hill's Sons & Co. *v.* United States (151 Fed. Rep., 475; T. D. 27747), relating to oleic acid, classified under paragraph 1, tariff act of 1897, as an acid not specially provided for, and claimed by the importers to be free of duty under paragraph 568 as fit only for use as soap stock. For decision below see Abstract 3909 (T. D. 25805).

Suit 1732.—FLAX-CARD WASTE.—United States *v.* W. F. Corne. United States circuit court, district of Massachusetts, January 25, 1907. No. 96. On application for review of a decision of the Board of United States General Appraisers.

Dismissed by consent. The Government contended (T. D. 26497) that so-called card waste, held by the Board to be dutiable as waste under paragraph 463, tariff act of 1897, had been properly classified as tow of flax under paragraph 326. For decision below see G. A. 6056 (T. D. 26415). Note suit 1734 (United States *v.* Charles H. Wood), a companion appeal still pending, which it is supposed will be tried on the merits of the case.

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Suit 1771.—FINISHED CASTINGS.—North American Lace Company *v.* United States. United States circuit court, eastern district of Pennsylvania, February 28, 1907. No. 49. On application for review of a decision of the Board of United States General Appraisers. Before Holland, District Judge.

Argued; decision *affirmed* on the grounds stated in Lehigh Manufacturing Company *v.* United States (T. D. 28055), on finished castings, the facts in that case being the same as in this. For decision below see Abstract 7033 (T. D. 26516). No appeal.

Suit 1794.—FLAX FABRICS, ETC.—G. Cheminais *v.* United States. United States circuit court, eastern district of Missouri, January 8, 1907. No. 5251. On application for review of a decision of the Board of United States General Appraisers.

Argued; decision *reversed* in part. The case related to goods classified in part as hemmed handkerchiefs under paragraph 345, tariff act of 1897, and in part as flax fabrics weighing more than 4½ ounces to the square yard under paragraph 346. The importers contended that the goods were dutiable as unhemmed handkerchiefs under said paragraph 345, as fabrics weighing less than 4½ ounces under said paragraph 346, as manufactures of cotton under paragraph 322, as cotton cloth under Schedule I, or as manufactures in chief value of vegetable fiber (jute) under paragraph 347. These contentions were sustained by the Board as to portions of the importations in controversy; but the importers asserted that a still further allowance should have been made. The court held as to certain items that an additional refund should be made of $137.50. For decision below see Abstract 8958 (T. D. 26857).

Suit 1798.—PROTEST—TIMELINESS.—Charles H. Wyman & Co. *v.* United States. United States circuit court, eastern district of Missouri, February 8, 1907. No. 5248. On application for review of a decision of the Board of United States General Appraisers.

Argued: decision *reversed*. The protest related to millinery ornaments, which were classified as jewelry under paragraph 434, tariff act of 1897, and which the importers contended were dutiable as manufactures of glass or of metal, under paragraph 112 or 193, tariff act of 1897. The Board overruled the protest on the ground that it had not been filed within the time prescribed by law. For decision below see Abstract 8569 (T. D. 26802). The Government has taken an appeal in this case to the circuit court of appeals, eighth circuit.

Suit 1865.—ARACHID OIL.—Charles D. Stone & Co. *v.* United States. United States circuit court, northern district of Illinois, March 23, 1907. No. 28352. On application for review of a decision of the Board of United States General Appraisers.

Decision *reversed* by consent, without argument or opinion, so-called arachid oil, which was classified as an expressed oil under paragraph 3, tariff act of 1897, being held free of duty under paragraph 626, as nut oil. For decision below see Abstract 11989 (T. D. 27458).

Suit 1903.—MOLDED EARTHENWARE.—Charles D. Stone & Co. *v.* United States. United States circuit court, northern district of Illinois, May 14, 1907. No. 28466. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* without prejudice, by consent. Earthenware ornamented with figures given in the molding process, which was classified as decorated under paragraph 96, tariff act of 1897, was claimed to be dutiable under paragraph 94, relating to "common yellow, brown, or gray earthenware." For decision below see Abstract 13369 (T. D. 27691).

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Suit 3706.—PRESERVED PINEAPPLES.—Paul Taylor Brown Company *v.* United States. United States circuit court of appeals, second circuit, April 27, 1907. Appeal from the circuit court of the United States for the southern district of New York.

Appeal *dismissed* by consent. On the same date orders were entered in said circuit court vacating the judgment of affirmance previously entered (148 Fed. Rep., 333; T. D. 27516) and reversing the decision of the Board of General Appraisers, G. A. 5787 (T. D. 25577). This action was taken on the authority of Dudley *v.* United States (T. D. 28052), holding canned pineapples containing sugar to be dutiable as pineapples preserved in their own juice, under paragraph 263, tariff act of 1897.

Suit 3962.—POSTAL-CARD ALBUMS.—American News Company *v.* United States. United States Supreme Court, May 27, 1907. No. 740. On petition for writ of certiorari to the circuit court of appeals for the second circuit.

Petition *denied*. In the decisions below (148 Fed. Rep., 1017, and 149 *id.*, 1022; T. D. 27722) the decision of the circuit court, southern district of New York (142 Fed. Rep., 786; T. D. 27029), was affirmed, which had affirmed G. A. 5952 (T. D. 26099), relating to postal-card albums.

Suit 3986.—ARROWROOT.—Schoellkopf, Hartford & Hanna Company *v.* United States. United States circuit court, southern district of New York, March 27, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent. Middleton *v.* United States (T. D. 27749) followed, relating to arrowroot. For decision below see G. A. 5995 (T. D. 26234).

Suit 4151.—ENFLEURAGE GREASE—COMBINATIONS OF ESSENTIAL OILS.—United States *v.* Ungerer & Co. United States circuit court, southern district of New York, May 20, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *reversed* in part, without argument or opinion. The Government contended (T. D. 26930) that substances described as "valley lily enfleuraged pomade" and "floressence valley lily" had been properly classified under paragraph 3, tariff act of 1897, relating to combinations of essential oils, and that the Board had erred in holding them free of duty under paragraph 626 as enfleurage grease. Further evidence was introduced in the circuit court, on the basis of which the Government's contention was sustained as to the "floressence valley lily." For decision below see G. A. 6219 (T. D. 26886).

Suit 4157.—NEEDLECASES.—Guthman, Solomons & Co. *v.* United States. United States circuit court of appeals, second circuit, March 7, 1907. No. 227. Appeal from the circuit court of the United States for the southern district of New York.

Appeal *dismissed* by consent. For decision below see 148 Federal Reporter, 332 (T. D. 27501), affirming Abstract 9328 (T. D. 26902), which had held furnished needlecases dutiable as entireties, overruling the importer's contention that the cases should be treated as usual coverings.

Suit 4172.—SLICED MUSHROOMS.—V. Cassazza & Bro. *v.* United States. United States circuit court, southern district of New York, April 30, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *reversed* by consent. Sliced mushrooms were held dutiable as vegetables in their natural state under paragraph 257, tariff act of 1897, as claimed by the importers, on the authority of Zanmati *v.* United States (T. D. 28054). For decision below see G. A. 6253 (T. D. 26968).

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Suits 4173-5 and 4184.—SLICED MUSHROOMS.—Austin, Nichols & Co. *v.* United States (4173), Meyer & Lange *v.* United States (4174), Pollak & Epstein (4175), and Zucca & Co. *v.* United States (4184). United States circuit court of appeals, second circuit, May 2, 1907. Appeals from the circuit court of the United States for the southern district of New York.

Appeals *dismissed* by consent. In the same cases and on the same date orders were entered in the circuit court for the southern district of New York, vacating the judgments of affirmance previously entered (T. D. 27499), and reversing the decision of the Board of General Appraisers, G. A. 6253 (T. D. 26968). This action was taken on the authority of Zanmati *v.* United States (T. D. 28054), holding sliced mushrooms dutiable as vegetables in their natural state under paragraph 257, tariff act of 1897.

Suit 4177.—SLICED MUSHROOMS.—Kaufmann Brothers *v.* United States. United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *reversed* by consent. Same question as in suit 4172 (*supra*). For decision below see G. A. 6253 (T. D. 26968).

Suit 4184.—See suits 4173, etc. (*supra*).

Suits 4229, 4474, and 4731-4.—OLIVE OIL.—Marchesini Brothers *v.* United States (4229), Cusimano *v.* United States (2 cases, 4474 and 4731), Ignazio Lupo *v.* United States (4732), Zucca & Co. *v.* United States (4733), and Robert Alberghini *v.* United States (4734). United States circuit court, southern district of New York, May 13, 1907. On application for review of decisions of the Board of United States General Appraisers. Before Platt, District Judge.

Decisions *affirmed* by consent. The importers contended that the merchandise should have been held free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for manufacturing or mechanical purposes. For decisions under review see G. A. 6317 (T. D. 27218), Abstract 12696 (T. D. 27591), and Abstract 13693 (T. D. 27765).

Suits 4239-40.—MOCHA SKINS.—Abe Stein Company *v.* United States (4239) and Goat and Sheepskin Import Company *v.* United States (4240). United States circuit court, southern district of New York, May 23, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *reversed* on the authority of Goat and Sheepskin Import Company *v.* United States (T. D. 28190), relating to the hair on Mocha sheepskins. For decision below see G. A. 6337 (T. D. 27279).

Suit 4252.—CARBON STICKS—SIMILITUDE.—Knauth, Nachod & Kühne *v.* United States. United States circuit court, southern district of New York, March 26, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent. The case related to articles which should have been classified under paragraph 98, tariff act of 1897, as carbon sticks, by similitude. The Board had overruled the protest because the similitude clause was not referred to. Note United States *v.* Dearberg (132 Fed. Rep., 245; T. D. 25782). For decision below see Abstract 11068 (T. D. 27318).

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Suit 4271.—BALATA.—G. Amsinck & Co. *v.* United States. United States circuit court, southern district of New York, May 16, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Argued; decision *reversed* on the authority of Earle *v.* United States (T. D 27977), relating to balata. For decision below see Abstract 11659 (T. D. 27409).

Suit 4353.—SULPHUR.—Stanley Jordan & Co. *v.* United States. United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent, on the authority of Vandiver *v.* United States (T. D. 27917), relating to sulphur. For decision below see G. A. 6393 (T. D. 27456).

Suits 4371 and 4606.—BALATA.—Middleton & Co. *v.* United States (4371) and H. A. Gould Company *v.* United States (4606). United States circuit court, southern district of New York, April 6, 1907. On application for review of decisions of the Board of United States General Appraisers.

Decisions *reversed*, by consent, on the authority of Earle *v.* United States (T. D. 27977), crude balata being held free of duty under paragraph 579, tariff act of 1897, as crude india rubber. For decisions below see Abstract 12110 (T. D. 27475) and Abstract 13128 (T. D. 27665). No appeal

Suit 4474.—See suits 4229, etc. (*supra*).

Suits 4476-92.—GAUGE OF OLIVE OIL.—United States *v.* M. Descalzi & Beta (4476), United States *v.* Charles Friedenberg (4477), United States *v.* Parodi, Erminio & Co. (4478), United States *v.* Marchesini Brothers (4479), United States *v.* L. Peirano (4480), United States *v.* F. Romeo & Co. (4481), United States *v.* Strohmeyer & Arpe Company (4482), United States *v.* M. Bacci (4483), United States *v.* Joseph A. Ravotto (4484), United States *v.* A. Zanmati & Co. (4485), United States *v.* A. Cassazza & Sons (4486), United States *v.* G. Sasso & Sons (4487), United States *v.* I. Grass (4488), United States *v.* Perry, Ryer & Co. (4489), United States *v.* Cesare Conti (4490), United States *v.* D. Rocca & Co. (4491), and United States *v.* Roberto Maresca (4492). United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent. United States *v.* Zucca (T. D. 28002) followed, relating to the gauge of olive oil in tins. For decision below see G. A. 6416 (T. D. 27556).

Suit 4504.—PREMATURE PROTEST.—J. P. Faraon *v.* United States. United States circuit court, southern district of New York, March 27, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent. For decision below see Abstract 12541 (T. D. 27561), holding, on the authority of American Cigar Company *v.* United States (146 Fed. Rep., 484; T. D. 27036), that the protests in question were prematurely filed.

Suits 4513-4, 4518, 4522, 4650-1, and 4768.—PINS—JEWELRY.—E. W. Bedell *v.* United States (4513), Charles Scherer *v.* United States (4514), R. Sentner & Co. *v.* United States (4518), H. Herrmann *v.* United States (4522), D. Hirschberg & Bro. *v.* United States (4650), and Eschwege & Cohn *v.* United States (2 cases, 4651 and 4768). United States circuit court, southern district of New York, March 19, 1907. On application for review of decisions of the Board of United States General Appraisers.

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Decisions *affirmed* by consent. These cases relate to pins and possibly other articles, classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable as manufactures of the component material of chief value. A similar contention was sustained in the decisions of the Board; but the importers contended for a more extensive allowance than was made by the Board. For decisions below see Abstracts 12555 and 12560 (T. D. 27561), Abstract 12599 (T. D. 27572), Abstract 12772 (T. D. 27602), Abstract 13276 (T. D. 27685), and Abstract 13804 (T. D. 27785).

Suit 4520.—IMITATION PRECIOUS STONES.—Morris Goldberg *v.* United States. United States circuit court, southern district of New York, March 25, 1907. On application for review of a decision of the Board of United States General Appraisers.

Decision *affirmed* by consent. In the decision below the Board sustained the importer's contention that articles assessed as beads under paragraph 408, tariff act of 1897, were dutiable as imitation precious stones under paragraph 435. The importer contended that the protests should have been sustained as to all items so assessed. For decision below see Abstract 12679 (T. D. 27591).

Suit 4522.—See suits 4513, etc. (*supra*).

Suit 4606.—See suits 4371, etc. (*supra*).

Suit 4621.—ARTIFICIAL SILK YARN.—Goldberg & Co. *v.* United States. United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed*. Artificial silk yarn, held dutiable as silk yarn by similitude under paragraph 385, tariff act of 1897, was claimed to be dutiable as cotton yarn by similitude under paragraph 302. For decision below see G. A. 6459 (T. D. 27661).

Suit 4649.—SPEAR-BACK GLOVES.—Mark Cross Company *v.* United States. United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent. The goods consisted of so-called 1-rib or 1-cord spear-back gloves, which the importers contended were improperly subjected to the duty provided in paragraph 445, tariff act of 1897, on gloves stitched or embroidered with more than three single strands or cords. For decision under review see Abstract 13209 (T. D. 27674).

Suits 4650-1.—See suits 4513, etc. (*supra*).

Suit 4652.—MOLDED EARTHENWARE.—Charles D. Stone & Co. *v.* United States. United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* without prejudice, by consent. The question is the same as in suit 1903 (*supra*). For decision below see Abstract 13340 (T. D. 27691).

Suit 4681.—OLIVE OIL IN TINS.—United States *v.* Austin, Nichols & Co. United States circuit court, southern district of New York, May 22, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent on the authority of United States *v.* La Manna (T. D. 28186), in which it was held that olive oil in large tins was subject to the provision in paragraph 40, tariff act of 1897, for olive oil not specially provided for. For decision below see Abstract 13512 (T. D. 27729).

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Suit 4709.—OLIVE OIL.—E. D. Papavasilopulo *v.* United States. United States circuit court, southern district of New York, May 22, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Argued; decision *affirmed.* The importer contended that the merchandise was free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for manufacturing or mechanical purposes. For decision below see Abstract 13585 (T. D. 27734).

Suits 4731-4.—See suits 4229, etc. (*supra*).

Suits 4765-7.—FISHHOOKS—SUFFICIENCY OF PROTESTS.—Abbey & Imbrie *v.* United States (4765), J. W. Hampton, Jr., & Co. *v.* United States (4766), and H. J. Frost & Co. *v.* United States (4767). United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent. These cases relate to fishhooks, as to which the Board overruled the importers' protests for indefiniteness. For decision below see G. A. 6493 (T. D. 27763).

Suit 4768.—See suits 4513, etc. (*supra*).

Suit 4814.—OLIVE OIL.—United States *v.* George P. Calogera. United States circuit court, southern district of New York, May 16, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Argued; decision *affirmed.* The Government contended that the Board had improperly held the merchandise to be free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for manufacturing or mechanical purposes. For decision below see Abstract 14067 (T. D. 27824).

Suit 4849.—GRANITE MONUMENTS.—F. B. Vandegrift & Co. *v.* United States. United States circuit court, southern district of New York, April 9, 1907. On application for review of a decision of the Board of United States General Appraisers.

Dismissed by consent, this case being a duplicate of suit 4848, still pending. For decision below see G. A. 6529 (T. D. 27869), relating to granite monuments.

Suits 4886-7.—COTTON YARN.—Rudolph Cohen *v.* United States (4886) and G. Robinson & Son *v.* United States (4887). United States circuit court, southern district of New York, May 13, 1907. On application for review of a decision of the Board of United States General Appraisers. Before Platt, District Judge.

Decision *affirmed* by consent. The cases related to cotton yarn, which was claimed to be dutiable under paragraph 302, tariff act of 1897, as crochet cotton, etc. For decision below see Abstract 14461 (T. D. 27937).

Suits 4916-7.—JEWELRY.—D. Hirschberg *v.* United States (4916) and H. Herrmann *v.* United States (4917). United States circuit court, southern district of New York, May 13, 1907. On application for review of decisions of the Board of United States General Appraisers. Before Platt, District Judge.

Decisions *affirmed* by consent. The importers contended that portions of the importations in controversy had been improperly classified as jewelry under paragraph 434, tariff act of 1897. For decisions below see Abstracts 14910 and 14914 (T. D. 28074).

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(T. D. 28211.)

Drawback on clocks.

Drawback on clocks manufactured by the New Haven Clock Company, of New Haven, Conn., with the use of imported materials.—T. D. 28067 of April 6, 1907, extended.

TREASURY DEPARTMENT, *May 28, 1907.*

SIR: The Department's regulations of April 6, 1907 (T. D. 28067), providing for the allowance of drawback on the exportation of clocks manufactured by the Sessions Clock Company, of Forrestville, Conn., are hereby extended, so far as applicable, to cover clocks manufactured by the New Haven Clock Company, of New Haven, Conn., with the use of imported crystals, steel hands, balance staffs, mainsprings, window glass, luminous dials, bevel plate glass, window-glass circles, clock cases, plate-glass mirrors, and other materials set forth in their sworn statement, dated May 4, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(45806.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28212.)

Inspection and quarantine of animals imported into the United States.

[Circular No. 33.]

TREASURY DEPARTMENT, *May 31, 1907.*

To officers of the customs and others concerned:

The following regulations issued by the Secretary of Agriculture on April 4, 1907, under the provisions of the act of August 30, 1890, entitled "An Act providing for the inspection of meats for exportation, and prohibiting the importation of adulterated articles of food or drink and authorizing the President to make proclamations in certain cases, and for other purposes" (26 Stat., 401), and the act of Congress approved February 2, 1903, entitled "An Act to enable the Secretary of Agriculture to more effectually suppress and prevent the spread of contagious and infectious diseases of live stock and for other purposes" (32 Stat., 791), are published for the information and guidance of officers of the customs and others concerned, this Department approving of the selection of the ports mentioned therein as quarantine and inspection stations. Such regulations superseded those issued in Circular 57 of May 5, 1903 (T. D. 24412), and became effective on April 15, 1907.

Entry will not be required of animals imported for breeding purposes under the provisions of paragraph 473 of the tariff act until the end of the quarantine period, and such animals may be considered and treated as if under general order while in quarantine.

GEORGE B. CORTELYOU, *Secretary.*

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REGULATIONS FOR THE INSPECTION AND QUARANTINE OF HORSES, CATTLE, SHEEP, AND OTHER RUMINANTS, AND SWINE IMPORTED INTO THE UNITED STATES.

GENERAL PROVISIONS.

Ports of import and quarantine and inspection stations.

REGULATION 1. With the approval of the Secretary of the Treasury, the following-named ports, subports, and customs stations are hereby designated as quarantine stations, and all horses, cattle, sheep, and other ruminants, and swine imported into the United States and which are subject to both quarantine and inspection must be entered through said stations, viz, on the Atlantic seaboard: Boston, Mass.; New York, N. Y.; and Baltimore, Md. On the Pacific seaboard: San Francisco and San Diego, Cal., and Port Townsend, Wash. Along the boundary line between the United States and Mexico: Nogales, Ariz.; El Paso, Eagle Pass, Laredo, and Brownsville, Tex. Along the border or boundary line between the United States and Canada: Vanceboro, Houlton, Van Buren, and Fort Fairfield, Me.; Beecher Falls, Island Pond, Newport, Richford, and St. Albans, Vt.; Rouses Point, Hogansburg, Massena, Ogdensburg, Cape Vincent, Clayton, Charlotte, Niagara Falls, and Buffalo, N. Y.; Detroit, Port Huron, and Sault Ste. Marie, Mich., and Pembina, N. Dak.

The following-named stations are designated for the entry of animals, which are subject to inspection but not to quarantine, viz: Eastport and Calais, Me.; Derby Line, North Troy, Alburg, and Swanton, Vt.; Mooers Junction, Chateaugay, Fort Covington, Malone, Waddington, Morristown, Lisbon, and Alexandria Bay, N. Y.; Blaine, Sumas, and Seattle, Wash.

Definition of terms.

REGULATION 2. Whenever in these regulations the following words, names, or terms are used they shall be construed as follows:

Animals.—This word refers to and includes all or any of the following kinds: Horses, asses, mules, cattle, sheep, and other ruminants and swine.

Horses.—This word refers to and includes horses, asses, and mules.

Ruminants.—This word refers to and includes all animals which chew the cud, or regurgitate a portion of their food for a second mastication before finally swallowing it, such as cattle, sheep, goats, deer, antelopes of all varieties, camels, dromedaries, alpacas, llamas, giraffes, and buffaloes of various kinds. The regulations applying to sheep will govern for all ruminants except cattle.

Cattle.—This word refers to the domestic animals of the bovine species, but shall include in addition the bisons and various kinds of buffaloes.

Other ruminants refers to all animals defined above under "ruminants," except such as are embraced in the foregoing definition for "cattle."

Swine.—The word swine refers to and includes the domestic hog, the wart hog, the water hog, and other varieties of wild hogs prized by owners of menageries and zoological collections.

Contagious diseases.—These words include and apply to all or any of the following diseases: Glanders and farcy, maladie du coït, distemper or strangles, epizootic lymphangitis, anthrax, contagious pleuro-pneumonia, Texas or splenetic fever, tuberculosis, foot-and-mouth disease, rinderpest, surra, variola, foot rot, scabies, hog cholera, swine plague, swine erysipelas, and other contagious or infectious diseases of cattle, sheep, or other ruminants, and swine.

Inspector.—The word inspector, unqualified, refers to the veterinary inspector of the Bureau of Animal Industry in charge of the quarantine station.

Horses and accompanying forage.

REGULATION 3. All horses imported into the United States from any part of the world except North America shall be required to pass a veterinary inspection at the port of entry by an inspector of the Bureau of Animal Industry. Such inspector

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shall not allow the landing of any hay, straw, or forage which accompanies shipments of horses from any country on the continent of Europe until it has been disinfected as the inspector may prescribe. In case the inspector finds horses affected with any contagious disease he shall isolate them and immediately report the fact to the chief of the Bureau of Animal Industry, who may refuse to allow the landing of horses so diseased. When horses imported from the continent of Europe arrive in a healthy condition, and no diseased condition is discoverable, the hay, straw, and other forage from the continent of Europe may remain on board the steamer and be returned. This forage may be used without disinfection in the feeding of animals exported on the same ship, provided there are no indications that it is infected; but if the forage is found to be infected the fact must be reported to the chief of the Bureau of Animal Industry, who will direct the disposition to be made thereof.

Certificate for ruminants.

REGULATION 4. All ruminants imported into the United States from any part of the world except North America shall be accompanied by a certificate from the local authority of the district in which the said animals have been continuously located for six months next preceding the date of shipment, stating that no contagious pleuro-pneumonia, foot-and-mouth disease, anthrax, rinderpest, or any other disease contagious to cattle, except tuberculosis and actinomycosis, has existed in said district for one year preceding.

Ruminants and swine from the Netherlands and Belgium.

REGULATION 5. Ruminants and swine from the Netherlands and Belgium will not be eligible for entry into the United States if shipped through or landed at any port in continental Europe outside of the Netherlands and Belgium. They should be shipped direct to the United States, or may be transshipped at an English port.

Certificate for swine.

REGULATION 6. All swine imported into the United States from any part of the world except North America shall be accompanied by a certificate similar to the one required for cattle, sheep, and other ruminants, but relating to the existence of foot-and-mouth disease, hog cholera, swine plague, and erysipelas.

Affidavit for ruminants and swine.

REGULATION 7. All ruminants and swine imported into the United States from any part of the world except North America shall also be accompanied by an affidavit by the owner stating that said animals have been continuously located in the district whence shipped for six months next preceding the date of shipment; that no contagious disease affecting the species of animals imported has existed among them nor among any animals of the kind with which they have come in contact for six months last past, and that no inoculation has been practiced among said animals during the preceding year; also by an affidavit from the importer or his agent supervising the shipment, stating that they have not passed through any district infected with contagious diseases affecting said kind of animals; that they have not been exposed in any possible manner to the contagion of any of said contagious diseases, and that the animals, when not driven, have been shipped in clean and disinfected cars and vessels direct from the farm where purchased.

Presentation of papers to collector of customs.

REGULATION 8. The certificates and affidavits hereinabove required must accompany said animals and be presented to the collector of customs at the port of entry and be by him delivered to the inspector of the Bureau of Animal Industry stationed at said port, to allow the animals to be imported into the United States.

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Period of quarantine.

REGULATION 9. All cattle imported into the United States from any part of the world except North America, Great Britain, Ireland, and the Channel Islands shall be subject to a quarantine of ninety days, counting from the date of shipment, this date of shipment to be the date of clearance of the vessel bringing the animals to the United States. Sheep and other ruminants and swine from any part of the world except North America shall be subject to a quarantine of fifteen days, counting from the date of arrival at the quarantine station; provided that cattle and sheep imported for immediate slaughter at the port of landing may be imported without quarantine, but shall be subject to such restrictions as the chief of the Bureau of Animal Industry, after causing an inspection to be made, may consider necessary in each case for guarding the domestic animals of the United States from contagion; provided further that the period of quarantine for cattle imported from Great Britain, Ireland, and the Channel Islands shall be sixty days, counting from the date of shipment.

Tuberculin test for cattle.

REGULATION 10. All cattle six months old or over imported from Great Britain, Ireland, the Channel Islands, the Netherlands (Holland), and Belgium directly into the United States, and which are subject to quarantine, shall be tested with tuberculin by an inspector of the Bureau of Animal Industry before being exported or after arrival at the animal quarantine station at the port of entry: and, when considered necessary, a subsequent tuberculin test of imported cattle shall be made during the last two weeks of their quarantine period. Cattle from countries not otherwise provided for shall be tested in the said quarantine station. All cattle so tested which show a reaction shall be prohibited from entry into the United States or be disposed of as provided in regulation 15 of these regulations. Persons desiring animals tested abroad should address the inspector of the United States Bureau of Animal Industry, care of United State's consul's office, Liverpool, England.

Permits for import animals.

REGULATION 11. Any person contemplating the importation of cattle, sheep, and other ruminants, and swine from any part of the world except North America must first obtain from the Secretary of Agriculture two permits, one stating the number and kind of animals to be imported, the port, and the probable date of shipment, which will, on presentation to the American consul at the said port of shipment, entitle them to clearance; the other stating the port at which said animals are to be landed and quarantined and the approximate date of their arrival, and this will assure the reception of the number and kind of animals specified therein at the port and quarantine station on the date prescribed for their arrival or at any time during three weeks immediately following, after which the permit will be void. These permits shall in no case be available at any port other than the one mentioned therein. Permits must be in the name of the owner of or agent for any one lot of animals. Permits will be issued to quarantine at such port as the importer may elect, so far as facilities exist at such port, but in no case will permits for importation at any port be granted in excess of the accommodations of the Government quarantine station at such port.

Papers by United States consuls.

REGULATION 12. United States consuls should give clearance papers or certificates for animals from their districts intended for exportation to the United States only upon presentation of permits as above provided, with dates of probable arrival and destination corresponding with said permits, and in no case for a number in excess of that mentioned therein. When such shipments originate in the interior of a foreign country these permits should be submitted to the consul of that district and through the forwarding agent to the consul at the port of embarkation.

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Inspection.

REGULATION 13. All animals imported into the United States and which are subject to inspection shall be carefully inspected by an inspector of the Bureau of Animal Industry, and all animals found to be free from disease and not to have been exposed to any contagious disease shall be admitted into the United States, subject to the provisions for quarantine as required by regulation 9, except as otherwise provided.

Quarantine release.

REGULATION 14. A release from quarantine will be given to each owner for the number and kind of animals belonging to him which are discharged from quarantine, and this release will be a certificate of fulfillment of quarantine regulations. In case an importation of animals is owned by more than one person a release will be issued to each owner or agent covering the animals which belong to him.

Disposal of diseased animals.

REGULATION 15. Whenever any animal on arrival at the port of entry or in the quarantine station is found to be affected with a contagious disease or to have been exposed to such disease, said animal and all animals that have been in contact with or exposed to said animal shall be placed in special quarantine. All animals so quarantined either on arrival at port of entry or after reaching the quarantine station shall be at once reported by the inspector to the Chief of the Bureau of Animal Industry, who will direct whether or not said animals quarantined shall be appraised and slaughtered as provided by section 8 of the act approved August 30, 1890.

Disinfection of vessels.

REGULATION 16. If a shipment of imported animals shall prove to be infected with or to have been exposed to infection, such portions of the cargo or the vessel on which they arrived as have been exposed to these animals or their emanations shall be subjected, under the direction of the inspector of the Bureau of Animal Industry, to disinfection in such manner as may be considered necessary by said inspector before the shipment can be landed. In all cases the parts of the vessel that have been occupied by imported animals shall be cleaned and disinfected with limewash under the supervision of the inspector of the port.

Articles accompanying animals.

REGULATION 17. No litter, fodder, or other aliment, nor any ropes, straps, chains, girths, blankets, poles, buckets, or other things used for or about the animals, and no manure shall be landed from any vessel excepting under such regulations as the inspector shall prescribe.

Movement from vessels to quarantine stations.

REGULATION 18. On moving animals from the ocean steamer to the quarantine grounds they shall not be unnecessarily passed over any highways, but shall be placed on cars at the wharves or removed to the cars on a boat which is not used for conveying other animals. If such boat has carried animals within three months it must be first cleaned and then disinfected under the supervision of the inspector, and after the conveyance of the imported animals the boat shall be disinfected in the same manner before it may be again used for the conveyance of animals. When passage upon or across the public highway is unavoidable in the transportation of animals from the place of landing to the quarantine grounds it shall be under such careful supervision and restrictions as the inspector and the local authorities may in special cases direct.

Special platforms and chutes.

REGULATION 19. Platforms and chutes used for loading and unloading imported animals shall be reserved for such animals, or shall be cleaned and disinfected as above before being used for such imported animals.

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Special cars.

REGULATION 20. The railway cars used in the transportation of animals to the quarantine grounds shall be either cars reserved for their exclusive use or box cars not otherwise employed in the transportation of animals or their fresh products, and after each journey with animals to the quarantine grounds they shall be disinfected by thorough cleansing and disinfection under the direction of the inspector.

REQUIREMENTS AT QUARANTINE STATIONS.

Arrival of animals.

REGULATION 21. While animals are arriving at the quarantine stations or leaving them, all quarantined stock in the yards adjoining the alleyways through which they must pass shall be rigidly confined to their stables. Animals arriving by the same ship may be quarantined together in one yard and stable, but those coming on different ships shall in all cases be placed in separate yards.

Gates of station.

REGULATION 22. The gates of the quarantine stations and of all yards of said stations shall be kept locked except when animals are entering or leaving quarantine.

Animal attendants.

REGULATION 23. The attendants on animals in particular yards are forbidden to enter other yards and buildings unless such are occupied by stock of the same shipment with those under their special care.

Dogs, cats, etc., prohibited.

REGULATION 24. No dogs, cats, or other animals, except those necessarily present, shall be allowed in the quarantine grounds.

Record kept by inspector.

REGULATION 25. The allotment of yards shall be under the direction of the inspector, who shall keep a register of animals entered, with description, name of owner, name of vessel in which imported, date of arrival and release, and other important particulars.

Water; manure.

REGULATION 26. The inspector shall see that water is regularly furnished to the stock. Special places for depositing manure from yards and stables shall be provided and no manure shall be removed from the quarantine station until the release of the animals producing the same.

Disposal of milk.

REGULATION 27. Milk from quarantined animals shall not be used by any persons other than those in charge of such animals, nor fed to any other animals than those within the same lot, until the animals have been in quarantine ten days.

Feed and attendants to be provided by owner.

REGULATION 28. Feed and attendants shall be provided by the owners of stock quarantined, and said owner or his agent shall give satisfactory assurance to the inspector at the time of admission to quarantine that such provision will be made. The employees of such owners shall keep the sheds and yards clean to the satisfaction of the inspector and be subject to the rules at the station. If for any cause the owners of the quarantined stock refuse or neglect to supply feed and attendants, the inspector will furnish the same. The feed and care so furnished shall be at the expense of the owner of the stock and the charges therefor will be a lien on the animals. After the expiration of one-third of the quarantine period, if payment has not been made, the owners of the animals will be notified by the inspector that if said charges be not immediately paid. or satisfactory arrangements made for the payment, the inspector will sell the stock at public auction at the expiration of the period of quarantine to pay the expense of feed and care during that period. Notice of the sale will be published once a week for two weeks in a newspaper published in the county where

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the station is located. The day of sale will be at the expiration of the quarantine period, and the sale will be made at such place as may be designated by the inspector. From the proceeds of the sale an amount equal to the charges for feed and care of the animals and the expense of the sale will be covered into the United States Treasury, and the remainder, if any, will be held for the owners, but if not called for at the end of six months from the date of sale this balance will be deposited in the United States Treasury.

Smoking, visitors, and public sales.

REGULATION 29. Smoking is strictly forbidden within any quarantine inclosure. No visitors shall be admitted to the quarantine station without special written permission from the inspector. Butchers, cattle dealers, and their employees are especially excluded. No public sale shall be allowed within quarantine grounds.

Record of temperatures.

REGULATION 30. The inspector shall, in his daily rounds, so far as possible, take the temperature of each animal, beginning with the herds that have been longest in quarantine and ending with the most recent arrivals, and shall record such temperatures on lists kept for that purpose. In passing from one herd to another he shall invariably wash his thermometer and hands in a weak solution (1 to 40) of carbolic acid.

Appearance of disease in quarantine.

REGULATION 31. If any disease diagnosed to be of a contagious nature shall appear the inspector shall notify the chief of the Bureau of Animal Industry, who shall visit the station personally or send a veterinary inspector, and on the confirmation of the diagnosis the herd shall be disposed of according to the gravity of the affection. The yard and shed in which such disease shall have appeared shall be subjected to a thorough disinfection. Litter and fodder shall be burned. Yards, fences, sheds, utensils, and other appliances shall be disinfected as the chief of the Bureau of Animal Industry may direct. In case of the appearance of any contagious disease the infected herd shall be rigidly confined to its stable or stables, where disinfectants shall be freely used, and the attendants shall be forbidden all intercourse with the attendants in other yards and with persons outside the quarantine grounds.

Importation of pure-bred animals for breeding purposes.

REGULATION 32. Importers of animals which are subject to both inspection and quarantine, imported for breeding purposes and intended to be entered free of duty under the provisions of paragraph 473 of the tariff act of July 24, 1897, will not be required to give the bond or stipulation for the production of registry certificates, provided for by the customs regulations, until the end of the quarantine period, in order that they may avail themselves of such period to transfer the registration of imported animals from the foreign to the affiliated American books of registry. Such animals will not, however, be released from quarantine except upon notice from the collector of customs that all requirements of the customs regulations relative to their entry have been complied with by the importer.

IMPORTATIONS FROM NORTH AMERICAN COUNTRIES.

Consignments for slaughter.

REGULATION 33. Animals admitted from North American countries for immediate slaughter shall be consigned to some recognized slaughtering center, and shall be slaughtered within two weeks from the date of entry. All animals admitted for export shall be subject to inspection at the port of entry.

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CANADA.

Affidavit to accompany animals.

REGULATION 34. All animals imported into the United States from the Dominion of Canada shall be accompanied by an affidavit made by the owner or importer, declaring clearly the purpose for which said animals are imported, viz, whether for breeding purposes, for milk production, for work, for grazing, feeding, or slaughter, or whether they form part of settlers' effects, or whether they are horses entered for temporary stay, as provided by regulation 35. Said affidavit shall be presented to the collector of customs at the port of entry, who will decide whether the animals are entitled to entry under these regulations, and who will notify the inspector of the Bureau of Animal Industry in all cases where the regulations require an inspection to be made.

Horses.

REGULATION 35. Horses for breeding, racing, show, and sale purposes, for grazing or for work, shall be inspected at the port of entry. Those belonging to Indian tribes and settlers and those used in connection with stock raising (cow ponies) or mining, and those for temporary stay at points along the frontier not exceeding two weeks, whether for pleasure, driving, or teaming, may be admitted without inspection, upon written permission from the Secretary of Agriculture first had and obtained. Horses may be admitted in bond at any port of the United States, without inspection, for export from any port of the United States; they shall, however, be subject to inspection when exported from ports at which this Department has inspectors stationed.

Cattle.

REGULATION 36. Cattle for breeding purposes, milk production, grazing, or feeding must be inspected and must be accompanied by a certificate signed by a Canadian official veterinarian, stating that no contagious disease affecting cattle, except tuberculosis and actinomycosis, has existed in the district in which the animals have been kept for six months preceding the date of importation. The owner must present an affidavit that said certificate refers to the cattle in question.

Tuberculin test for cattle.

REGULATION 37. Cattle over 6 months old for breeding purposes and milch cows shall also be accompanied by a satisfactory certificate of tuberculin test (which test shall have been made within thirty days of the date of importation by a Canadian official veterinarian or an inspector of the Bureau of Animal Industry), giving the date and place of testing and a description of the cattle, with age and markings.

Cattle for exhibition purposes.

REGULATION 38. The chief of the Bureau of Animal Industry may, however, by written order, waive the foregoing tuberculin test requirement for cattle to be imported temporarily for exhibition purposes, provided such cattle are accompanied by a satisfactory certificate of tuberculin test made not more than six months previously and an affidavit by the owner or importer stating that the said certificate of tuberculin test refers to the cattle in question. Any such cattle which are not sold to remain in the United States shall be returned immediately to Canada at the close of the exhibition. The Department must be notified of any Canadian cattle which will remain in the United States, not tested as required by regulation 37, and the tuberculin test will be applied to them by an inspector of this Department before shipment to destination. All cattle, sheep, and swine intended for exhibition purposes must be shipped directly to the exhibition grounds and must not be unloaded in any public stock yards.

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Cattle quarantined.

REGULATION 39. All cattle imported for breeding, milk production, grazing, or feeding, when not accompanied by the required affidavits and certificates, must be detained in quarantine for one week at the expense of the owner or importer, under the supervision of the inspector. During this detention a rigid inspection will be made and cattle for breeding or milk production which are over 6 months old will be tested with tuberculin. Animals found free from disease at the end of that period will be released.

Inspection of cattle.

REGULATION 40. Cattle for slaughter shall be inspected. Those forming part of settlers' effects or belonging to Indian tribes may be admitted through any port without inspection or certification upon written permission of the Secretary of Agriculture first had and obtained. Cattle in bond for export may be admitted without inspection at any of the ports named in regulation 1 in transit to and for export from Portland, Me., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Newport News and Norfolk, Va., subject to inspection at the port of export, provided that inspection may be required by the Secretary of Agriculture whenever in his opinion such inspection is necessary.

Sheep.

REGULATION 41. All sheep imported into the United States for breeding, grazing, or feeding must be inspected and must be accompanied by a certificate signed by a Canadian official veterinarian, stating that no contagious disease affecting sheep has existed in the district in which the animals have been kept for six months preceding the date of importation. The owner or importer shall present an affidavit that said certificate refers to the sheep in question; provided, however, that the importation of sheep not showing signs of scabies or other disease may be permitted from a district infected with scab, if such sheep are accompanied by a certificate signed by a Canadian official veterinarian, stating that they have been twice carefully dipped under his personal supervision, or under the personal supervision of a Canadian official veterinarian, in a lime-and-sulphur dip or a tobacco-and-sulphur dip, prepared as follows, or in any other dip which may be approved by the Secretary of Agriculture: The lime-and-sulphur dip made with 8 pounds of unslaked lime and 24 pounds of flowers of sulphur to 100 gallons of water. The lime and the sulphur should be boiled together for not less than two hours, and all sediment allowed to subside before the liquid is placed in the dipping vat. The tobacco-and-sulphur dip made with sufficient extract of tobacco or nicotine solution to give a mixture containing not less than five one-hundredths of 1 per cent of nicotine and 2 per cent flowers of sulphur.

Sheep for slaughter, export, etc.

REGULATION 42. Sheep for immediate slaughter and those belonging to Indian tribes or forming part of settlers' effects will be admitted at any port without inspection when accompanied by a certificate of an official veterinarian showing freedom from disease. Sheep in bond for export will be admitted without inspection when accompanied by such certificate at any of the ports mentioned in regulation 1 in transit to and for export from Portland, Me., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Newport News and Norfolk, Va., subject to inspection at the port of export.

Swine.

REGULATION 43. All swine shall be subjected to inspection and shall be accompanied by a certificate signed by a Canadian official veterinarian stating that no swine plague nor hog cholera has existed within a radius of 5 miles of the premises in which they have been kept for a period of six months immediately preceding the date of shipment. The owner or importer must present an affidavit that the said certificate refers to the swine in question. Swine not accompanied by affidavit and certificate will be subject to a quarantine of two weeks at the expense of the owner or importer, under the supervision of the inspector.

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Cars to be cleaned and disinfected.

REGULATION 44. The railroad cars used in the transportation of animals specified by these regulations must be thoroughly cleaned and disinfected before such animals are placed therein. All litter from previous shipments must be removed and the car whitewashed with lime and carbolic acid—1 pound of crystallized carbolic acid to 5 gallons of limewash. Unless this regulation is complied with, Canadian animals will not be allowed entry into the United States, and animals from the United States will not be admitted into Canada. The shipper should see that the cars are properly cleaned and disinfected before animals are loaded.

MEXICO.

Horses.

REGULATION 45. Horses for breeding, racing, show, and sale purposes, for grazing or for work, shall be inspected at the port of entry. Those belonging to Indian tribes and settlers and those used in connection with stock raising (cow ponies) or mining, and those for temporary stay at points along the frontier not exceeding two weeks, whether for pleasure, driving, or teaming, are not required to be inspected. Horses will be admitted in bond at any port of the United States upon inspection, for export from any port of the United States. They shall, however, be subjected to inspection when exported from ports at which this Department has inspectors stationed.

Cattle.

REGULATION 46. Cattle imported into the United States from Mexico are subject to inspection. Cattle for breeding purposes, milk production, grazing, or feeding, shall be accompanied by an affidavit made by the owner stating that said cattle have been in the district from which shipped for six months next preceding the date of importation, and that no contagious disease affecting cattle has existed among them or among any animals of the kind with which they have come in contact for six months last past; also by an affidavit made by the importer or his agent supervising the shipment, stating that they have not passed through any district infected with contagious diseases affecting cattle; that they have not been exposed in any possible manner to the contagion of any contagious disease, and that the animals, when not driven, have been shipped in cleaned and disinfected cars and vessels direct from the farm or ranch where purchased.

Cattle quarantined.

REGULATION 47. Cattle imported for breeding purposes, milk production, grazing, or feeding, when not accompanied by the required affidavits, shall be detained in quarantine for one week at the expense of the owner or importer, under the supervision of the inspector. During this detention a rigid inspection shall be made.

Cattle for slaughter.

REGULATION 48. Cattle for immediate slaughter may be admitted when by inspection they are found free from disease. When so entered, cattle shall be subject to the rule and the regulations pertaining to the transportation of cattle from the district infected with Texas or splenetic fever.

Sheep.

REGULATION 49. Sheep for breeding purposes, grazing, or feeding will be admitted if found upon inspection by an inspector of the United States Bureau of Animal Industry to be free from scabies or other contagious diseases and are accompanied by an affidavit made by the owner stating that they have been in the district from which shipped for six months next preceding the date of importation and that no contagious disease affecting sheep has existed among them nor among other animals of the kind with which they have come in contact for six months last past; also by an affidavit made by the importer or his agent supervising the shipment, stating that they have not passed through any district infected with contagious diseases affecting sheep, and

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that they have not been exposed in any possible manner to the contagion of any contagious disease, and that the animals, if not driven, have been shipped in cleaned and disinfected cars and vessels direct from the farm or ranch where purchased. But such sheep shall nevertheless be dipped at the expense of the owner or importer, as prescribed by the rule and regulations of the Secretary of Agriculture, before being permitted to proceed to their destination in the United States or to mingle with other sheep.

Sheep quarantined.

REGULATION 50. Sheep for breeding purposes, grazing, or feeding, not accompanied by the required affidavits, must be detained in quarantine for one week, or as long as may be required, at the expense of the owner or importer, under the supervision of the inspector, and twice dipped in a dip provided for in the foregoing regulations.

Sheep for slaughter.

REGULATION 51. Sheep for immediate slaughter will be admitted subject to inspection by an inspector of the Bureau of Animal Industry. If scab or any other contagious disease affecting sheep is found to exist among them, they shall not be admitted.

Swine.

REGULATION 52. All swine shall be accompanied by affidavits similar to those required for cattle and sheep relating to the existence of contagious disease affecting swine, and when not accompanied by said affidavits shall be detained in quarantine for one week, as provided for cattle and sheep.

Animals in bond.

REGULATION 53. Animals in bond to Canada, entering and passing through United States territory, will be subject to inspection at the port of entry, or at any point en route, by an inspector of the Bureau of Animal Industry, and if found diseased or to have been exposed to the contagion of disease, shall be dealt with as the Secretary of Agriculture may direct, depending upon the nature of the disease, as provided by these regulations for the particular kind of animal or animals so affected or exposed.

(T. D. 28213.)

Drawback on root beer and ginger ale.

Drawback on root beer and ginger ale, in concentrated form, manufactured by the Charles E. Hires Company, of Philadelphia, Pa., from imported raw cane sugar.—T. D. 22617 of November 20, 1900, extended.

TREASURY DEPARTMENT, *May 31, 1907.*

SIR: The Department's regulations of November 20, 1900 (T. D. 22617), providing for the allowance of drawback on root beer and ginger ale manufactured by the Charles E. Hires Company, of Philadelphia, with the use of refined sugar produced from imported raw cane sugar, are hereby extended, so far as applicable, to cover the same articles exported in concentrated form in barrels, provided that the quantity of sugar upon which drawback shall be allowed shall not exceed that specified in the manufacturers' sworn statement, dated May 14, 1907, transmitted herewith for filing in your office.

Respectfully, JAMES B. REYNOLDS,
(2677 *k.*) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

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(T. D. 28214.)

Payment of compensation of inspectors while lading and unlading vessels at night.

[Circular No. 35.]

TREASURY DEPARTMENT, *June 1, 1907.*

To officers of the customs and others concerned:

The appended act of Congress, approved June 30, 1906, which provides for the lading and unlading of vessels or other conveyances at night and the compensation of inspectors of customs for night service, and amends section 2871 of the Revised Statutes, is hereby promulgated.

The compensation of an inspector of customs for services performed under this act for any time between sunset and 11 o'clock p m. shall be one full day's pay of the inspector, and for any time after 11 o'clock p. m. two full days' pay of the inspector, and a sufficient sum to pay such compensation shall be collected by the collector from the master, owner, or consignee and deposited in a special deposit account to the official credit of the collector, subject to his check, for payment to the inspectors rendering the service, and to be accounted for as provided in Department Circulars 90, 91, and 92 of August 10, 1903.

All service of inspectors rendered between 6 o'clock p. m. and 7 o'clock a. m. on a night permit to lade or unlade, as provided in this act, shall be deemed to have been rendered under the provisions of the act, and shall be compensated as provided herein.

GEORGE B. CORTELYOU, *Secretary.*

AN ACT To amend section twenty-eight hundred and seventy-one of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty-eight hundred and seventy-one of the Revised Statutes of the United States is hereby amended so as to read as follows:

"SEC. 2871. Upon arrival at any port in the United States of a steamship or other conveyance from a foreign port or place, or upon the arrival of a steamship or other conveyance from another port in the United States belonging to a line designated by the Secretary of the Treasury as a common carrier of bonded merchandise, the collector of customs, with the concurrence of the naval officer, where there is one, upon or after the issuing of a general order, shall grant, upon proper application therefor, a special license to lade or unlade the cargo of said vessel or other conveyance at night—that is to say, between sunset and sunrise; but before any such special license is granted the master, agents, or consignees of the vessel or other conveyance shall execute and deliver to the collector a good and sufficient bond, to be approved by him, conditioned to indemnify and save the collector harmless from any and all losses and liabilities which may occur or be occasioned by reason of the granting of such special license. And any liability of the master or owner of any such steamship or other conveyance to the owner or consignee of any merchandise landed from her or other conveyance shall not be affected by the granting of such special license or of any general order, but such liability shall continue until the merchandise is properly removed from the dock whereon the same may be landed. The collector, under such general regulations as the Secretary of the Treasury may prescribe, shall fix a uniform and reasonable rate of compensation for like service, to be paid by the master, owner, or consignee, whenever such special license is granted, and shall collect and distribute the same among the inspectors assigned to superintend the lading or unlading of the cargo."

Approved June 30, 1906.

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(T. D. 28215.)

Regulations provided for in the commercial agreement between Germany and the United States.

[Circular No. 36.]

TREASURY DEPARTMENT, *June 1, 1907.*

To collectors and other officers of the customs:

In accordance with the commercial agreement signed April 22, 1907, between the Imperial German Government and the Government of the United States, the following regulations, which will remain in force for the term of that agreement, are published for your guidance so far as they relate to your duties.

Market value as defined by section 19 of the customs administrative act shall be construed to mean the export price whenever goods, wares, and merchandise are sold wholly for export, or sold in the home market only in limited quantities, by reason of which facts there can not be established a market value based upon the sale of such goods, wares, and merchandise in usual wholesale quantities, packed ready for shipment to the United States.

Statements provided for in section 8 of the customs administrative act are not to be required by consular officers except upon the request of the appraiser of the port after entry of the goods. The consular regulations of 1896, paragraph 674, shall be amended accordingly.

In reappraisement cases the hearing shall be open and in the presence of the importer or his attorney, unless the Board of Appraisers shall certify to the Secretary of the Treasury that the public interest will suffer thereby; but in the latter case the importer shall be furnished with a summary of the facts developed at the closed hearing upon which the reappraisement is based.

The practice in regard to "personal appearance before consul," "original bills," and "declaration of name of ship" will be made uniform in the sense—

1. That the personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.

2. That the original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate and that these bills shall be returned after inspection by the consular officer.

3. That the declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

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Paragraph 678 of such regulations, as amended March 1, 1906, shall be further amended by striking out the words:

"Whenever the invoice is presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States,"

And by inserting after the first sentence the following clause:

"As place, in which the merchandise was purchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office."

Paragraph 681 of the consular regulations of 1896, relative to "swearing to the invoice," shall be revoked.

Special agents, confidential agents, and others sent by the Treasury Department to investigate questions bearing upon customs administration shall be accredited to the German Government through the Department of State at Washington and the Foreign Office at Berlin, and such agents shall cooperate with the several chambers of commerce located in the territory apportioned to such agents. It is hereby understood that the general principle as to *personæ gratæ* shall apply to these officials.

The certificates as to value issued by German chambers of commerce shall be accepted by appraisers as competent evidence and be considered by them in connection with such other evidence as may be adduced.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28216.)

Reciprocal commercial agreement between United States and Germany under provisions of section 3, act of July 24, 1897.

TREASURY DEPARTMENT, *June 3, 1907.*

To collectors and other officers of the customs:

The appended reciprocal commercial agreement between the United States of America and Germany, and the proclamation thereof issued under the provisions of section 3 of the act of July 24, 1897, are published for the information and guidance of officers of the customs and others concerned.

GEORGE B. CORTELYOU, *Secretary.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the German Government has entered into a Commercial Agreement with the United States in conformity with the provisions of the third section of the Tariff Act of the United States approved July 24, 1897, by which Agreement in the judgment of the President reciprocal and equivalent concessions are secured in favor of the products of the United States;

Therefore, be it known that I, THEODORE ROOSEVELT, President of the United States of America, acting under the authority conferred by said Act of Congress, do

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hereby suspend during the continuance in force of said agreement the imposition and collection of the duties imposed by the first section of said act upon the articles hereinafter specified, being the products of the soil and industry of Germany; and do declare in place thereof the rates of duty provided in the third section of said act to be in force and effect from and after July 1, 1907, as follows:

Argols, or crude tartar, or wine lees, crude, five per centum ad valorem.

Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

Champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint, three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

Still wines, and vermuth, in casks, thirty-five cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, one dollar and twenty-five cents per case, and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of four cents per pint or fractional part thereof, but no separate or additional duty shall be assessed upon the bottles or jugs.

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, fifteen per centum ad valorem.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this first day of June, A. D. one thousand [SEAL.] nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

By the President: THEODORE ROOSEVELT.

ELIHU ROOT, *Secretary of State.*

COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND GERMANY.

Signed at Washington, April 22, 1907; at Levico, May 2, 1907.

The President of the United States of America, on the one hand, and His Majesty the German Emperor, King of Prussia, in the name of the German Empire, on the other, animated by a desire to adjust the commercial relations between the two countries until a comprehensive commercial treaty can be agreed upon, have decided to conclude a temporary commercial agreement, and have appointed as their Plenipotentiaries for that purpose, to wit:

The President of the United States of America, the Honorable Elihu Root, Secretary of State of the United States; and

His Majesty the German Emperor, King of Prussia, His Excellency Baron Speck von Sternburg, His Ambassador Extraordinary and Plenipotentiary to the United States of America.

Who, after an exchange of their respective full powers, found to be in due and proper form, have agreed upon the following articles:

ARTICLE I.

In conformity with the authority conferred on the President of the United States in Section 3 of the tariff act of the United States approved July 24, 1897, it is agreed on the part of the United States that the following products of the soil and industry of Germany imported into the United States shall, from and after the date when this Agreement shall be put in force, be subject to the reduced tariff rates provided by said Section 3, as follows:

Argols, or crude tartar, or wine lees, crude, five per centum ad valorem.

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Brandies, or other spirits manufactured or distilled from grain or other materials, one dollar and seventy-five cents per proof gallon.

Champagne and all other sparkling wines, in bottles containing not more than one quart and more than one pint, six dollars per dozen; containing not more than one pint each and more than one-half pint, three dollars per dozen; containing one-half pint each or less, one dollar and fifty cents per dozen; in bottles or other vessels containing more than one quart each, in addition to six dollars per dozen bottles on the quantities in excess of one quart, at the rate of one dollar and ninety cents per gallon.

Still wines, and vermuth, in casks, thirty-five cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, one dollar and twenty-five cents per case, and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of four cents per pint or fractional part thereof, but no separate or additional duty shall be assessed upon the bottles or jugs.

Paintings in oil or water colors, pastels, pen and ink drawings, and statuary, fifteen per centum ad valorem.

ARTICLE II.

It is further agreed on the part of the United States that the modifications of the Customs and Consular Regulations set forth in the annexed diplomatic note, and made a part of the consideration of this Agreement, shall go into effect as soon as possible and not later than from the date when this Agreement shall be put in force.

ARTICLE III.

Reciprocally, the Imperial German Government concedes to the products of the soil and industry of the United States enumerated in the attached list upon their importation into Germany the rates of duty indicated therein.

ARTICLE IV.

The provisions of Articles I and III shall apply not only to products imported directly from the country of one of the Contracting Parties into that of the other, but also to products which are imported into the respective countries through a third country, so long as such products have not been subject to any further processes of manufacture in that country.

ARTICLE V.

The present Agreement shall apply also to countries or territories which are now or may in the future constitute a part of the customs territory of either contracting party.

ARTICLE VI.

The present Agreement shall be ratified by His Majesty the German Emperor, King of Prussia, as soon as possible, and upon official notice thereof the President of the United States shall issue his proclamation giving full effect to the respective provisions of this Agreement.

This Agreement shall take effect on July 1, 1907, and remain in force until June 30, 1908. In case neither of the contracting parties shall have given notice six months before the expiration of the above term of its intention to terminate the said Agreement, it shall remain in force until six months from the date when either of the contracting parties shall notify the other of its intention to terminate the same.

Done in duplicate in English and German texts.

In testimony whereof the Plenipotentiaries above mentioned have subscribed their names hereto at the places and on the dates expressed under their several signatures.

ELIHU ROOT,
WASHINGTON, *April 22, 1907.*
STERNBURG,
LEVICO, *May 2, 1907.*

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RATES OF IMPORT DUTY IN GERMANY.

The German general tariff mentioned in this list is the Customs Tariff of December 25, 1902, as formulated by the German Customs Law of the same day.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
1	Rye.....per 100 kilos...	5.00
2	Wheat and spelt.....do.....	5.50
3	Barley:	
	Malting barley.....do.....	4.00
	Other barley.....do.....	1.30
4	Oats.....do.....	5.00
7	Maize (Indian corn) and sorghum [Dari].....do.....	3.00
10	Rice, not cleaned [*unpoliert*].....do.....	4.00
11	Beans for food.....do.....	2.00
	Pease, lentils.....do.....	1.50
12	Beans for fodder (horse beans, etc.), lupines, vetches.....do.....	1.50
15	Linseed, hemp seed.....	Free.
18	Red-clover seed, white-clover seed, and other clover seed.....	Free.
19	Grass seed of all kinds.....	Free.
ex 45	Grapes:	
	Fresh—	
	Table grapes, sent otherwise than by post in packages weighing up to 5 kilos, inclusive.....per 100 kilos...	4.00
	Other.....do.....	10.00
ex 46	Walnuts and hazelnuts, unripe (green) or ripe, even if shelled, ground, or otherwise broken up or simply prepared.....per 100 kilos...	2.00
	(ex 47-49) Other fruit:	
ex 47	Fresh—	
	Apples, pears, quinces—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise—	
	Unpacked or only in sacks of at least 50 kilos gross weight—	
	From September 1 to November 30.....	Free.
	From December 1 to August 31.....per 100 kilos...	2.00
	Otherwise packed—	
	In single covering.....do.....	3.20
	In more than one covering.....do.....	5.00
	Apricots	Free.
	Peaches—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise.....per 100 kilos...	2.00
	Medlars.....	Free.
	Plums of all kinds, cherries, mahaleb cherries [*Weichseln*]—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise—	
	Prunus domestica [*Hauszwetschgen*]—	
	From September 1 to November 30.....	Free.
	From December 1 to August 31.....per 100 kilos...	2.00
	Other plums.....do.....	2.00
	Cherries for use in the distillation of spirits, by permission and with control over their use.....	Free.
	Other cherries; mahaleb cherries [*Weichseln*].....per 100 kilos...	1.00
	Hips and sloes and other stone or kernel fruit not mentioned above.....	Free.
	Strawberries—	
	Sent by post in packages weighing not more than 5 kilos.....	Free.
	Imported otherwise.....per 100 kilos...	10.00
	Raspberries, currants, gooseberries, blackberries, bilberries (huckleberries), elderberries, juniper berries, and other edible berries, except cranberries.....	Free
	Note.—Apples, pears, and quinces, fresh, are treated as unpacked if they are imported loose or in sacks of at least 50 kilos gross weight in vehicles provided with not more than eight compartments. Similarly, apples, pears, and quinces, fresh, are treated as unpacked if imported loose or in sacks of at least 50 kilos gross weight in ships provided with compartments, on condition that the capacity of each compartment is not less than 6 cubic meters. The compartments of vehicles or ships may be carpeted or covered with straw or lined with paper or straw, or may even be formed of layers of straw.	

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
	(ex 47-49) Other fruit—Continued.	
48	Dried, kiln-dried (cut up and peeled or not)—	*Marks.*
	Apples and pears, including waste capable of use.....per 100 kilos...	4.00
	Apricots and peaches.....do.....	4.00
	Plums of all kinds—	
	Loose or in casks or sacks weighing at least 50 kilos gross weight, per 100 kilos.....	4.00
	In boxes weighing at least 10 kilos gross weight.....per 100 kilos...	5.00
	Packed otherwise.....do.....	6.00
	Other dried or kiln-dried fruit.....do.....	4.00
49	Ground, pulped, powdered, or otherwise broken; also salted, cooked without sugar, or otherwise simply prepared; fermented.....per 100 kilos...	4.00
ex 51	Oranges, fresh.....do.....	3.25
ex 59	Juices of fruits [*Obst*] (except of grape), not fermented, not containing ether or alcohol, not boiled down, or boiled down without the addition of sugar, sterilized or not.....per 100 kilos....	4.00
	(74-76) Timber for building and industrial purposes, not separately mentioned in the general tariff:	
74	Rough or merely cut across with the ax or saw, with or without the bark—	
	Hard..... per 100 kilos.....	.12
	or per cubic meter...	1.08
	Soft..... per 100 kilos.....	.12
	or per cubic meter...	.72
75	Hewn longitudinally or otherwise prepared or cut up with the ax; also shavings produced by rending and shavings intended for the clarification of liquids produced otherwise than by rending—	
	Hard..... per 100 kilos.....	.24
	or per cubic meter...	1.92
	Soft..... per 100 kilos.....	.24
	or per cubic meter...	1.44
76	Sawn longitudinally or otherwise prepared, not planed—	
	Hard..... per 100 kilos.....	.72
	or per cubic meter...	5.76
	Soft..... per 100 kilos.....	.72
	or per cubic meter...	4.32
	Notes to Nos. 75 and 76.	
	Shingle boards grooved by the saw only will pay duty under No. 76 as shingle boards merely sawn.	
	Square timber (baulks, planks, etc.) hewn longitudinally, sawn or otherwise prepared, not planed, having only peg holes, pegs, slits, grooves, or bored holes, will pay conventional duty under Nos. 75 and 76, with a surtax as follows:	
	If the duty is paid by weight, 0.20 mark per 100 kilos.	
	If the duty is paid by volume—	
	Hard wood..... 1.60 marks per cubic meter.	
	Soft wood..... 1.20 marks per cubic meter.	
	Notes to Nos. 74-76.	
	1. Wood for building or industrial purposes, merely steamed (not at the same time colored), as also the same wood impregnated or otherwise chemically treated with the object only of increasing its durability, will pay duty under Nos. 74-76 without a surtax. Colored wood, or wood chemically treated for the purpose of being colored, is subjected to a surtax as follows:	
	If the duty is paid by volume, per cubic meter..... 2.40 marks.	
	If the duty is paid by weight, per 100 kilos -	
	Hard wood..... .30 mark.	
	Soft wood..... .40 mark.	
	2. The duty on wood included under these numbers may be paid either by weight or by measure, at the importer's option.	
81	Wooden blocks for paving:	
	Hard wood..... per 100 kilos.....	.72
	or per cubic meter...	5.76
	Soft wood..... per 100 kilos.....	.72
	or per cubic meter...	4.32
	Note.—Wooden paving blocks, steamed, impregnated, or otherwise chemically treated, pay the conventional rates of No. 81, without surtax.	
82	Naves, fellies, spokes, as well as pieces of wood recognizable as roughly shaped for these objects:	
	Of hard wood..... per 100 kilos.....	.72
	or per cubic meter...	5.76
	Of soft wood..... per 100 kilos.....	.72
	or per cubic meter...	4.32

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
83	Wood for casks (staves and headings), also pieces of wood recognizable as roughly shaped for these objects, not colored, not planed:	*Marks.*
	Of oak ..... per 100 kilos	.20
	Of oak ..... or per cubic meter	1.60
	Of other hard wood ..... per 100 kilos	.30
	Of other hard wood ..... or per cubic meter	2.40
	Of soft wood ..... per 100 kilos	.30
	Of soft wood ..... or per cubic meter	1.80
	Note.—The duty on wood for casks is not affected by mere treatment with the drawing knife or by smoothing the edges with the plane.	
	(ex 100–107) Live stock:	
104	Sheep ..... per 100 kilos live weight	8.00
105	Goats	Free.
106	Hogs ..... per 100 kilos live weight	9.00
107	Poultry—	
	Geese	Free.
	Fowls of all kinds and other poultry ..... per 100 kilos net weight	4.00
108	Meat, except bacon, and edible entrails of animals, except those of poultry:	
	Fresh or chilled ..... per 100 kilos	35.00
	Frozen ..... do	35.00
	Note.—Hogs, cut up, including the bacon adhering thereto, are dutiable at the conventional rate of 35 marks.	
	Simply prepared ..... per 100 kilos	35.00
	Prepared for the table ..... do	75.00
	Notes. 1. Slaughtered animals, fit for consumption, pay the same duty as fresh meat. 2. Fresh and simply prepared meat, free from bone (also tongues, but not edible entrails), is subject to a surtax of 10 per cent. Pickled and smoked hams (fore and hind hams) pay the conventional rate on meat simply prepared, without a surtax.	
ex 110	Poultry:	
	Killed, not prepared, carved up or not ..... per 100 kilos	14.00
	Larded or otherwise simply prepared ..... do	20.00
ex 126	Greases and grease-like fats (hog's lard, goose grease, beef marrow, and other grease-like fats), except oleomargarine ..... per 100 kilos	10.00
127	Hog's fat and goose fat, raw (not rendered nor pressed), except bacon and intestinal fat; also edible greaves ..... per 100 kilos	5.00
ex 162	Flour, burned or roasted or not, of grain, except oats ..... do	10.20
ex 180	Wine and fresh must of grapes, sterilized or not, in casks or tank wagons, of an alcoholic strength of not more than 14 per cent by weight ..... per 100 kilos	20.00
ex 185	Fruit wine (also fruit must in process of fermentation) in casks ..... per 100 kilos	3.00
198	Common baker's produce (without the addition of eggs, lard, spices, sugar, or the like) ..... per 100 kilos	10.20
ex 219	Articles of food or consumption of all sorts (not including beverages) in hermetically sealed receptacles, unless subject as such to higher duties:	
	Apricot sauce, without addition of sugar or sirup, in tin receptacles, weighing at least 5 kilos ..... per 100 kilos	5.00
	Preserved tomatoes; olives, whether preserved or not in vinegar, oil, or brine ..... per 100 kilos	30.00
	Other articles of food or consumption, except milk and cream, in hermetically sealed receptacles, so far as they are not subject to higher rates of duty as such ..... per 100 kilos	60.00
225	Pumice stone, emery, Vienna lime (powdered quicklime for polishing or cleaning), tripoli and similar mineral grinding, polishing, and cleaning substances, raw, ground, or washed:	
	In boxes, glasses, jars, or other packages suitable for retail sale, per 100 kilos	2.00
	In other receptacles, also shaped in bricks	Free.
233	Slate:	
	Rough blocks	Free.
	Rough slabs, rough table slates ..... per 100 kilos	1.00
	Roofing slates ..... do	.65
	Note.—Slabs of slate more than 20 centimeters thick are to be treated as blocks.	
ex 239	Petroleum, fluid natural mineral tar, brown coal tar oil, peat oil, shale oil, oil from the tar of bog-head or cannel coal, and other mineral oils not otherwise enumerated in the general tariff, crude or refined:	
	Lubricating oils; residues from the distillation of mineral oils, containing paraffin or of a tarry or pitchy nature, the latter provided that they do not sink in water; rosin oil ..... per 100 kilos	6.00

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
	ex 239—Continued.	
	Petroleum, fluid natural mineral tar, etc.—Continued.	
	Heavy benzine of a specific gravity of more than 0.750 up to 0.770, inclusive, at 15° C., for driving motors, manufactured in inland factories or imported from foreign countries, under control.....per 100 kilos...	*Marks.* 2.00
	Gas oil of a specific gravity of over 0.830 up to 0.880, inclusive, at 15° C., for driving motors, or for the carburation of water gas, manufactured in inland factories or imported from foreign countries, under control, per 100 kilos.....	3.00
	Note.—Petroleum and other refined mineral oils, not specially mentioned, suitable for illuminating purposes, may, at the option of the importer, be assessed for duty according to weight on the basis of 100 kilos, or according to volume, upon the condition that 125 liters, at a temperature of 15° C., are considered to be equivalent to 100 kilos, net weight, of the fluid.	
249	Mineral wax (ozocerite), refined, and ceresin (made from mineral wax, mixed or not with paraffin), in blocks, tablets, or balls; wax stumps [*Wachsstümpfe*] of refined mineral wax and of ceresin.....per 100 kilos...	10.00
ex 250	Paraffin, crude (paraffin scales, paraffin butter, etc.) or refined, except soft paraffin.....per 100 kilos...	10.00
251	Soft paraffin.....do.....	8.00
ex 258	Paraffin ointment, vaseline and vaseline ointment (not scented), per 100 kilos gross weight.....	10.00
259	Axle grease.....per 100 kilos...	6.00
260	Other lubricants, manufactured of fats or oils, liquid or solid, molded into shapes or not.....per 100 kilos gross weight...	7.50
ex 316	Calcium carbide.....	Free.
373	Casein, casein gum, and similar preparations, so far as they are not included under No. 206 of the general tariff.....per 100 kilos...	6.00
374	Glue in the rough (delimed bones).....do.....	3.00
375	Glue of all sorts (except albuminous glue), solid or liquid; gelatin, even colored.....per 100 kilos...	3.00
ex 385	Licorice juice:	
	Mixed with sugar, honey, oil of aniseed, sal ammoniac, or other flavoring or medicinal ingredients, or made up for retail sale.....per 100 kilos...	60.00
	Other, raw or purified, even in sticks packed in boxes or other larger coverings serving for the purpose of transportation only.....	Free.
	(ex 545-547) Leather, half or entirely dressed, whether prepared or not, not otherwise mentioned in the general tariff:	
545	Of a net weight of more than 3 kilos each piece—	
	Entire hides or half hides, with the heads, necks, bellies, and hoofs unseparated; head, neck, and belly pieces and hoofs, as well as horse shields, without regard to the weight of the pieces.....per 100 kilos...	30.00
	Pig leather, without regard to the weight of the pieces.....per 100 kilos...	18.00
	Bend leather [*Kernstücke*].....do.....	33.00
	Note.—Leather, including bend leather, of a net weight of more than 3 kilos per piece, for the manufacture of driving belts, with permit, and under control.....per 100 kilos...	22.00
ex 546	Of a net weight of from 1 to 3 kilos each piece—	
	Calf, natural color (natural brown).....do.....	25.00
	Other calf.....do.....	40.00
	(ex 555-556) Boots and shoes of leather of all kinds, including those made from hides with the hair still on and those made from fish or reptile skins:	
556	With soles of materials other than wood—	
	Weighing more than 1,200 grams per pair.....per 100 kilos...	60.00
	Weighing more than 600 and up to 1,200 grams per pair; boot uppers of leather of all kinds, with elastic insertions, without regard to weight.....per 100 kilos...	90.00
	Weighing 600 grams or less per pair.....do.....	90.00
	Slippers and house shoes, without regard to weight.....do.....	60.00
	Notes.	
	1. Linings, trimmings, and ornaments of all kinds (buckles, bows, tassels, embroideries, laces, etc.), of other materials, including silk, but not including fur, do not affect the tariff treatment.	
	2. The following are to be treated as slippers and house shoes: Shoes which give no support to the instep or the heel, and are not in any other way (*e. g.*, by lacing, buttons, or elastic sides) adapted for closely fitting the foot. The conventional duty is also applicable to slippers and house shoes with a heel piece, but not to those with a raised heel.	
557	Driving belts and breadths of driving belts of leather of all kinds, as well as of raw hide (without the hair), with or without layers of coarse textiles or felt.....per 100 kilos...	50.00

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
ex 560	Saddler's and trunkmaker's wares, as well as other wares not separately mentioned in the general tariff, of leather of all kinds, raw hide (with or without the hair), parchment, bladder, gold-beater's skin, or fish or reptile skin, or entirely or partly covered with such materials; also saddler's and trunkmaker's wares of coarse vegetable textiles or of the rope-maker's wares mentioned under Nos. 484 or 485 of the general tariff, or wares entirely or mainly covered with such materials; all these so far as they are not chargeable with higher duties by reason of their combination with other materials, or do not belong to the classes of paper and paper wares entirely or partly covered with leather, included under Nos. 667 to 669 of the general tariff:	
	Picking straps, sewing and binding laces, leather tapes for dividers [*Florteilriemen*], leather laces for spinning and weaving, pickers, without regard to weight.....per 100 kilos...	*Marks.* 50.00
	Other articles—	
	Of a net weight of 2 kilos and more each—	
	Harness for horses; card backs, card bends (card slivers); card plates for fancy rollers; slips and plates for pickers; sliders (rubbing belts, traveling leather bands).....per 100 kilos...	50.00
	Other.....do.....	65.00
	Of a net weight less than 2 kilos each article—	
	Harness for horses; card backs, card bends (card slivers); card plates for fancy rollers; slips and plates for pickers; sliders (rubbing belts, traveling leather bands).....per 100 kilos...	65.00
	Other; also leather hangings without regard to weight, per 100 kilos.....	80.00
561	Glove leather cut out or stamped for gloves.....per 100 kilos...	125.00
578	India-rubber tires for wheels of vehicles; also tire covers, of textiles impregnated or coated with india rubber or with an internal layer of india rubber, per 100 kilos.....	60.00
ex 580	Textiles or felt impregnated or coated with india rubber or with internal layers of india rubber; india-rubber wares coated with textiles or with yarn wound thereon; all these if the textiles or the yarn do not consist entirely or partly of silk.....per 100 kilos...	100.00
	Textiles in combination with india-rubber threads; tissues of india-rubber threads combined with threads or yarn; all these if the textiles or the yarn consist entirely or partly of silk or other textile material.....per 100 kilos...	90.00
585	Tubes of hardened india rubber, not further worked.....do.....	25.00
586	Other wares of hardened india rubber, not separately mentioned in the general tariff, combined or not with other materials, so far as not falling under higher duties by reason of such combination.....per 100 kilos...	40.00
(ex 649-650)	Paper stock (half stuff for the manufacture of paper and pasteboard), in the form of pulp or solidified, whether bleached, dyed, mixed with mineral substances, glue, etc., or not:	
650	From wood, straw, esparto grass, or other vegetable fiber—	
	Wood pulp (mechanically prepared wood meal, wood grindings), per 100 kilos.....	1.25
	Chemically prepared wood pulp (cellulose); straw, esparto, and other fibrous materials.....per 100 kilos...	1.25
ex 651	Pasteboard, molded (dipped) or couched; also made of sheets of pasteboard stuck together:	
	Cardboard of mechanically or chemically prepared wood pulp; also of wood pulp prepared from steamed wood, rolled hard [*Braunholzpappe*, so-called leather board] strawboard, *Schrenzpappe*, and peat cardboard, and other coarse cardboard not separately mentioned in the general tariff, dyed in the pulp or not.....per 100 kilos...	1.50
653	Yellow straw paper.....do.....	3.00
	Very coarse gray blotting paper.....do.....	2.00
654	Packing paper, dyed in the pulp, glazed on one side or not.....do.....	3.00
655	Paper not included under other numbers of the general tariff, including carton paper, even ruled, made like parchment or grained:	
	Packing paper not included under No. 654.....per 100 kilos...	3.00
	Other.....do.....	6.00
656	Colored paper, including paper coated with chalk, white lead, or the like, or provided with metallic impressions; varnished paper; paper covered with scales of mica or glass, pounce or wool flocks; paper provided with painted, applied, or galvanoplastic metallic surfacing; also paper with gilt or silvered edges.....per 100 kilos...	8.00
657	Printed matter, printed by any process, so far as not included in chapter 12 of the general tariff; also "picture paper," including that produced by a copying process on paper and cardboard; also paper or cardboard colored or black edged, or ornamented in any way whatever:	
	Of one color.....per 100 kilos...	6.00
	Of more than one color; also with impressions or edges in colors, gold or other metals.....per 100 kilos...	6.00

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
ex 660	Wall paper and wall-paper borders of all kinds, neither gilt, silvered, bronzed, embossed, nor velvety ....per 100 kilos...	12.00
ex 694	Grindstones and whetstones, wholly or partly of carborundum....do.....	12.00
	(ex 737–740) Hollow glass:	
737	Neither molded nor ground, polished, smoothed, cut, etched, or figured—	
	Of natural color ....per 100 kilos...	3.00
	White (or half white) transparent, with or without separate rings of massive white (or half white) glass.....per 100 kilos gross weight...	8.00
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass—	
	Milk, alabaster, and bone glass, white....per 100 kilos...	10.00
	Other....do.....	15.00
738	With the bottoms only molded, or with the stoppers shaped or ornamented by grinding, molding, etc.—	
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass....per 100 kilos...	15.00
	Other....do.....	12.00
739	Molded, ground, polished, smooth, cut, engraved, or figured in any other way—	
	Colored or white nontransparent, or even flashed with colored or white nontransparent glass....per 100 kilos...	15.00
	Other....do.....	12.00
	(ex 741–742) Plate and sheet glass, not separately mentioned in the general tariff, neither ground, polished, cut, figured, ribbed, scalloped, curved, frosted, etched, flashed, cut in facets, nor silvered:	
741	Neither colored nor opaque—	
	Plate glass, cast and blown; so-called crude glass (rough cast plates) more than 5 millimeters thick, ribbed or not....per 100 kilos...	3.00
	Sheet glass, including "crude" glass (ribbed or not) having a thickness of 5 millimeters or less, if the length and breadth together amount to—	
	120 centimeters or less....per 100 kilos...	6.00
	More than 120 and up to 200 centimeters...per 100 kilos gross weight...	8.00
	More than 200 centimeters....per 100 kilos gross weight...	10.00
ex 742	Bull's-eye glass....do.....	12.00
758	Glass pendants for chandeliers; glass buttons; all these colored or not, with loops or not....per 100 kilos...	12.00
	Note.—Painted, gilt or silvered glass buttons pay duty under No. 763.	
759	Small glass plates; glass beads, bugles, and scales, even if strung on thread only for purposes of packing and transmission; glass drops (glass tears, Prince Rupert's drops); small glass balls (massive glass drops):	
	White or colored....per 100 kilos...	2.00
	Painted, gilt or silvered....do.....	15.00
760	Glass pastes containing lead or not; artificial gems, and glass corals, not mounted, even if strung on thread only for purposes of packing and transmission:	
	Rough—	
	Glass pastes and artificial gems....per 100 kilos...	20.00
	Glass corals....do.....	15.00
	Worked (ground, etc.)....do.....	25.00
763	Glass not otherwise mentioned in the general tariff, molded, stamped, ground, polished, smoothed, cut, etched, figured, or not; glass threads and spun glass:	
	Not colored nor opaque....per 100 kilos...	12.00
	Colored or opaque....do.....	15.00
	Painted, gilt or silvered, figured or not by the application or burning in of colors....per 100 kilos...	20.00
	(ex 777–843) Iron and iron alloys:	
782	Nonmalleable cast iron, not otherwise mentioned in the general tariff, rough:	
	Weighing, per piece, net weight—	
	More than 100 kilos....per 100 kilos...	2.50
	More than 40 up to 100 kilos....do.....	3.00
	40 kilos or less....do.....	3.50
797	Axles and parts of railway wheels (including hubs, tires, frames, and rims), railway wheels, sets of railway wheels....per 100 kilos...	2.50
800	Construction pieces of malleable iron, painted or not....do.....	4.50
ex 820	Bolts for fish plates and sleepers, cross-tie bars, clips, hook nails, insulator supports (brackets), rough....per 100 kilos...	3.00
	Screws and rivets of more than 13 millimeters shank diameter; nuts and washers for screws; horseshoes, calkins, rough....per 100 kilos...	5.00
ex 821	Railway couplings, parts of switches and signals, rough....do.....	6.00
	Railway buffers, rough....do.....	3.00
829	Chains (except bicycle chains) and parts thereof:	
	Rough—	
	For towing....do.....	1.50
	Other....do.....	5.00
	Worked ....do.....	15.00

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
	(ex 777–843) Iron and iron alloys—Continued.	
ex 839	Springs not otherwise mentioned in the general tariff:	
	Fine (for wigs, gloves, hats, and the like), including all springs, polished, nickeled, lacquered, varnished, or which have undergone any further process of working up other than mere grinding.....per 100 kilos ..	*Marks.* 20.00
	Other:	
	Rough.....do.....	6.00
	Merely ground.....do.....	10.00
	(ex 869–880) Copper and copper alloys:	
875	Wire gauze of all kinds for industrial purposes, especially for use in the manufacture of paper, endless or in rolls or pieces, composed of wire, with or without insertions [*Einlagen*] of thread or yarn; drying cylinders for printing establishments [*Vordruckwalzen*], smoothed or ribbed, with or without watermark.....per 100 kilos...	18.00
ex 891	Phonographs, including electrical machines in combination therewith, per 100 kilos.....	40.00
ex 894	Combustion and explosion motors for motor cycles, weighing, per piece, 40 kilos or less, net weight.....per 100 kilos...	75.00
	Steam engines, steam turbines, water turbines; combustion and explosion motors; power (other than electromotive) machinery in combination with pumps (including water engines) or freezing machines; cranes:	
	Weighing, per piece, net weight—	
	Over 500 up to 1,000 kilos.....per 100 kilos...	11.00
	Over 1,000 up to 2,500 kilos.....do.....	7.50
	Over 2,500 up to 5,000 kilos.....do.....	6.00
	Over 5,000 up to 50,000 kilos.....do.....	5.00
	Over 50,000 up to 100,000 kilos.....do.....	4.50
	Over 100,000 kilos.....do.....	3.50
	Water-pressure engines:	
	Weighing, per piece, net weight—	
	Over 1,000 up to 2,500 kilos.....do.....	8.00
	Over 2,500 up to 5,000 kilos.....do.....	6.50
	Over 5,000 up to 50,000 kilos.....do.....	5.50
	Over 50,000 up to 100,000 kilos.....do.....	5.00
	Steam engines combined with hammers, blowing machines (including ventilating machines), or with hoisting machines:	
	Weighing, per piece, net weight—	
	Over 5,000 up to 50,000 kilos.....per 100 kilos...	5.00
	Over 50,000 up to 100,000 kilos.....do.....	4.50
	Other machines of the kinds specified in No. 894 of the general tariff:	
	Weighing, per piece, net weight—	
	Over 1,000 up to 2,500 kilos.....per 100 kilos...	10.00
	Over 2,500 up to 5,000 kilos.....do.....	8.00
	Over 5,000 up to 50,000 kilos.....do.....	6.00
	Over 50,000 up to 100,000 kilos.....do.....	5.00
	Note.—Steam engines for use in shipbuilding, together with the paddle wheels and screw propellers pertaining thereto, are admitted duty free.	
	(ex 913–914) Vehicles, intended to run on rails:	
ex 914	Not combined with motive machinery—	
	Freight cars, covered or not.....per 100 kilos...	3.00
ex 915	Vehicles not intended to run on rails (except water craft), combined with motive machinery (motor cars and motor cycles):	
	Motor cycles—	
	Weighing, each, net weight—	
	50 kilos or less.....per 100 kilos...	100.00
	Over 50 up to 100 kilos.....do.....	75.00
	Over 100 up to 250 kilos.....do.....	70.00
	Motor cars and motor cycles—	
	Weighing, each, net weight—	
	Over 250 up to 500 kilos.....do.....	40.00
	Over 500 up to 1,000 kilos .....do.....	25.00
	Over 1,000 kilos.....do.....	15.00
	(ex 916–918) Vehicles not intended to run on rails (except water craft), without motive machinery:	
ex 917	Carriages—	
	Four-wheeled, with not more than four fixed seats—	
	Without cover—	
	Weighing, each, net weight—	
	150 kilos or less .....per piece...	60.00
	More than 150 kilos .....do.....	100.00
	With cover .....do.....	150.00
	Four-wheeled, with more than four fixed seats—	
	Without cover.....do.....	150.00
	With cover .....do.....	160.00

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
	(ex 916–918) Vehicles not intended to run on rails, etc.—Continued.	
	Notes.	
	1. Folding seats are not reckoned as fixed seats. The box (driver's seat) is not to be counted as one of the fixed seats.	
	2. Wooden carriage bodies without the trucks shall be treated as wooden wares, according to their character, even if they are fitted with iron mounts; nor shall they be dutiable as passenger carriages, even where the hinge-fastened cover frames and the sloping footboard of the driver's seat (which is securely fastened to the iron clasps traversing the carriage body) have already been fixed in position, or where the wooden panels of the doors have been covered with coarse blocks of wood, or with jute tissue or sheet iron in order to strengthen them or to keep them from splitting.	
	3. Four-wheeled carriages fitted together in the rough pay one-fourth the duty on similar carriages finished. By carriages in the rough are meant those which, though provided with all the parts and fittings necessary in order to enable the carriages to be used (springs, axles, wheels, foreframe, brake, whiffletrees, and parts for attaching the traces, etc.), are neither colored, varnished, polished, painted, nor covered with leather or upholstered (nor contain loose cushions).	
	4. Carriage rugs, lamps, chests, and similar articles imported with carriages and intended to be fitted securely to or otherwise connected with the same, shall be regarded as parts of carriages and not charged duty separately.	
	5. Carriages imported without trucks (chassis), motors, or wheels, and intended for the construction of motor cars, shall be treated as four-wheeled carriages, and shall be dutiable according to the treaty rates under No. 917, if in a finished state, and at one-fourth of those rates if in the rough.	
ex 926	Small arms of all kinds of common metals or of alloys of common metals, except military arms ....per 100 kilos...	*Marks.* 60.00
927	Trigger guards, springs, cocks, and barrels, and parts thereof; also other parts of small arms (except locks and breech bolts [*Verschlussstücke*]) of common metals or alloys of common metals:	
	Rough....per 100 kilos...	6.00
	Worked—	
	Barrels only bored and turned or roughly ground....do.....	10.00
	Other articles....do.....	24.00
928	Locks and breech bolts [*Verschlussstücke*] and parts thereof, for small arms:	
	Roughly worked....per 100 kilos...	24.00
	Other....do.....	60.00
	Note to Nos. 927 and 928.—Barrels and stocks for small arms with locks, lock cases, or breech bolts [*Verschlussstücke*] fitted to them or packed up with them have to pay duty according to No. 926.	
929	Watches, including those with chimes:	
	In cases—	
	Of gold....per piece...	.80
	Of silver, gilt or not, or provided with gilt rims, pendants or knobs, per piece....	.60
	Of common metals or alloys thereof, gilt or silvered or not, or provided with gilt or silvered rims, pendants or knobs; of other materials...per piece....	.40
	Note.—Electrical watches are dutiable under No. 929.	
930	Watch cases:	
	Of gold....per piece....	.40
	Of silver, of common metals or alloys thereof, gilt or not, or provided with gilt rims, pendants, or knobs; of other materials....per piece...	.40
	Note.—If watch cases are imported in pieces but ready to be put together, backs will pay half, and rims (together with bezels or not) and bezels each a quarter of the duty on entire watch cases. So-called "false" watch cases and other parts pay duty according to the material of which made. *Note to Nos. 929 and 930.*—Watches and watch cases plated with gold or silver will pay duty as gilt or silvered.	
931	Mechanism for watches, complete, and rough works....per piece...	.40
932	Steel mainsprings and balances for watches....per 100 kilos...	60.00
933	Parts of watches of common metals or alloys thereof not previously mentioned in the general tariff:	
	Watch springs of steel; balances of bronze or brass....per 100 kilos...	60.00
	Other parts of watches, even gilt or silvered, or plated with gold or silver, or in combination with other materials, in so far as they may not be dutiable at higher rates by reason thereof....per 100 kilos...	120.00
	Note.—Pendants, rings, and key caps are dutiable under No. 933 when they are obviously intended to form parts of watches.	

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Rates of import duty in Germany—Continued.

Numbers of the German general tariff.	Articles.	Rate of duty.
		Marks.
937	Organs (with pipes).....per 100 kilos...	20.00
943	Musical boxes:	
	Musical boxes without case, weighing 500 grams, net weight, or less, per piece.....per 100 kilos...	20.00
	Other musical boxes.....do.....	20.00
	Apparatus for mechanical repetition of musical pieces.....do.....	25.00
	Note.—Parts of musical boxes, obviously recognizable as such, also alarm bells for alarm clocks (without mechanism), are dutiable as musical boxes.	

Correct:

JAMES L. GERRY
S. N. D. NORTH
N. I. STONE.

List referred to in Article Three of Commercial Agreement.

ELIHU ROOT
STERNBURG.

DIPLOMATIC NOTE REFERRED TO IN ARTICLE II OF COMMERCIAL AGREEMENT.

APRIL 22, 1907.

EXCELLENCY:

Referring to the Commercial Agreement signed this day between the Imperial German Government and the Government of the United States, I have the honor to inform you that instructions to the customs and consular officers of the United States and others concerned will be issued to cover the following points and shall remain in force for the term of the aforesaid Agreement.

A.

Market value as defined by Section 19 of the Customs Administrative Act shall be construed to mean the export price whenever goods, wares, and merchandise are sold wholly for export, or sold in the home market only in limited quantities, by reason of which facts there can not be established a market value based upon the sale of such goods, wares, and merchandise in usual wholesale quantities, packed ready for shipment to the United States.

B.

Statements provided for in Section 8 of the Customs Administrative Act are not to be required by consular officers except upon the request of the appraiser of the port, after entry of the goods. The Consular Regulations of 1896, paragraph 674, shall be amended accordingly.

C.

In reappraisement cases the hearing shall be open and in the presence of the importer or his attorney, unless the Board of Appraisers shall certify to the Secretary of the Treasury that the public interest will suffer thereby; but in the latter case the importer shall be furnished with a summary of the facts developed at the closed hearing upon which the reappraisement is based.

D.

The practice in regard to "personal appearance before consul," "original bills," "declaration of name of ship," shall be made uniform in the sense—

1. That the personal appearance before the consular officer shall be demanded only in exceptional cases, where special reasons require a personal explanation.

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2. That the original bills are only to be requested in cases where invoices presented to the consular officer for authentication include goods of various kinds that have been purchased from different manufacturers at places more or less remote from the consulate and that these bills shall be returned after inspection by the consular officer.

3. That the declaration of the name of the ship in the invoice shall be dispensed with whenever the exporter at the time the invoice is presented for authentication is unable to name the ship.

Paragraph 678 of such regulations, as amended March 1, 1906, shall be further amended by striking out the words:

"Whenever the invoice is presented to be consulated in a country other than the one from which the merchandise is being directly exported to the United States."

And by inserting after the first sentence the following clause:

"As place, in which the merchandise was puchased, is to be considered the place where the contract was made, whenever this was done at the place where the exporter has his office."

Paragraph 681 of the Consular Regulations of 1896 relative to "swearing to the invoice" shall be revoked.

E.

Special agents, confidential agents and others sent by the Treasury Department to investigate questions bearing upon customs administration shall be accredited to the German Government through the Department of State at Washington and the Foreign Office at Berlin, and such agents shall cooperate with the several chambers of commerce located in the territory apportioned to such agents. It is hereby understood that the general principle as to personæ gratæ shall apply to these officials.

F.

The certificates as to value issued by German chambers of commerce shall be accepted by appraisers as competent evidence and be considered by them in connection with such other evidence as may be adduced.

Accept, Excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency
BARON SPECK VON STERNBURG,
Imperial German Ambassador.

DIPLOMATIC NOTE.

MAY 2, 1907.

EXCELLENCY:

Referring to the Commercial Agreement concluded this day between this Government and the Imperial German Government, I have the honor to inform you that the President of the United States authorizes me to state that he will recommend to the Congress the enactment of an amendment of Section 7 of the Customs Administrative Act of June 10, 1890, as amended by Section 32, Act of July 24, 1897, so as to read as follows:

SECTION 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deductions from the cost or value given in the invoice, or pro forma invoice, or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry by more than

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ten per centum there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of one per centum of the total appraised value thereof for each one per centum in excess of ten per centum that such appraised value exceeds the value declared in the entry, but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued, and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the appraised value did not exceed the entered value, and shall be limited to twenty-five per centum of the appraised value of such article or articles. Such additional duties shall be construed to be penal and within the purview of Sections 5292 and 5293, Revised Statutes, and Sections 17 and 18, Act, June 22, 1874, and further shall be remitted in cases arising from unintentional or manifest clerical error; but these duties shall not be refunded in case of exportation of the merchandise nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than thirty-five per centum, except when arising from an unintentional or a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs may seize such merchandise and proceed as in the case of forfeiture for violation of the customs laws; and in any legal proceeding that may result from such seizure the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall only apply to the particular article or articles which are undervalued: *Provided, further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice. The duty shall not, however, be assessed in any case upon an amount less than the entered value.

Accept, Excellency, the renewed assurance of my highest consideration.

ELIHU ROOT.

His Excellency
BARON SPECK VON STERNBURG,
Imperial German Ambassador.

(T. D. 28217—G. A. 6606.)

Hats made of real horsehair.

Horsehair hats are not similar in material, quality, or texture to hats made of any of the substances enumerated in paragraph 409, tariff act of 1897, and are not dutiable thereunder. Neither are they dutiable by similitude to cotton hats, nor as unenumerated manufactured articles. Being similar in all the statutory particulars to silk hats, they are dutiable at the rate of 60 per cent under the provisions of paragraph 390 and section 7 of said act, as silk wearing apparel by similitude.—Donat *v.* United States (134 Fed. Rep., 1028; T. D. 25113), G. A. 5590 (T. D. 25022), G. A. 5614 (T. D. 25109), G. A. 5965 (T. D. 26150), and G. A. 6223 (T. D. 26897) followed.

United States General Appraisers, New York, May 28, 1907.

In the matter of protest 163330 of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise is described in the protest as "hats, made from so-called artificial silk." Duty was assessed thereon at the rate of 60 per cent ad valorem under the provisions of paragraph 390 and section 7, tariff act of 1897, by similitude as silk wearing apparel. They are claimed to be dutiable at

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50 per cent under paragraph 314 as cotton wearing apparel, or at 20 per cent under section 6 as unenumerated manufactured articles, or at 35 per cent under paragraph 409 as straw hats untrimmed. These claims are made by virtue of section 7.

Considerable testimony was offered by the importers at the hearing on the protest, but as far as the importation in question is concerned the testimony is a sort of academic symposium on the dutiable classification of horsehair hats. It is not connected in any way with the merchandise which is the subject of the protest. On the contrary, there is a glaring discrepancy between the pleading and the proof in that the merchandise to which the protest refers is described therein by the importer as hats made of artificial silk, while the testimony, such as it is, contains no proof as to such goods, and the sample in evidence is in fact a hat made of real horsehair. There are many different items of hats on the invoice, but there is nothing in the record to show which of them are covered by the protest, and no attempt was made to identify them with the terms of the protest. Consequently, even if we were of the opinion that on the general question involved the importer's contention is the correct one, we should be unable to make a finding of fact on which we could base a ruling of law.

From the trend of the testimony submitted, it is evident that counsel for the importer was endeavoring to show that horsehair hats were properly dutiable by similitude to straw hats, but in our opinion the attempt is a failure. His chief reliance appears to be on the alleged circumstance that horsehair hats are worn in the same season as straw hats, to wit, the summer, but aside from the fact that the testimony does not establish with certainty that such is the case, it is in evidence that some hats—lace hats, for instance—are worn both in summer and winter, and that horsehair hats are not worn exclusively in the summer season.

Another point that is strongly, not to say conclusively, against the contention of the importer that these hats are similar for duty purposes to straw hats, is that they do not resemble such hats in the statutory particulars of material, quality, and texture. Paragraph 409 expressly provides that the terms "grass" and "straw" as used therein "shall be understood to mean these substances in their natural form and structure, and not the separated fiber thereof." Counsel for the Government introduced in evidence illustrative samples of straw braid, such as is provided for in paragraph 409, and its entire dissimilarity to the material of which these hats are composed is seen at a glance. If these hats were in fact straw, they would not be dutiable under paragraph 409, for straw in such shape would be the separated fiber of straw, and hence excluded by the very terms of paragraph 409 from classification thereunder. If, then,

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hats that are made of the separated fiber of straw can not be classified under that paragraph for the reason that they are expressly excluded therefrom, how can it be contended that hats whose only resemblance to any kind of straw hats is to those made of the separated straw fiber are dutiable under that paragraph? Other considerations that suggest themselves are that real horsehair is, of course, an animal product, while the substances provided for in paragraph 409 are all vegetable, thus differing essentially in material, and also that hats of this character are, as shown by the evidence of one of the importer's witnesses, more expensive than either cotton or straw hats.

On the whole record we find that there is no similarity in the particulars of quality, material, or texture between the hats before us and hats made of any of the substances enumerated in paragraph 409; that as regards use they resemble lace and other hats as much as they do straw hats; that they bear a closer resemblance to silk hats than they do to cotton hats, or to any other hats that are specifically provided for. This finding disposes of the claim under section 6.

We hold that the goods are properly dutiable, as assessed, under paragraph 390, by similitude to silk wearing apparel.

The protest is overruled and the decision of the collector affirmed.

While there have been many decisions dealing with the subject of horsehair hats and braids, in which many different contentions have been advanced by the importers, the practice on the part of the Government of exacting a rate of duty as high as or higher than the rate herein complained of has never varied. Prior to the decision in the case of Donat *v.* United States (134 Fed. Rep., 1023), reported somewhat more fully in T. D. 25113, wherein horsehair braids were expressly held to be dutiable as silk braids by similitude, it had been the practice to assess such braids as braids in part of wool at a rate much higher than 60 per cent. Since then the latter rate has been invariably imposed. The Donat case was followed by the Board in G. A. 5590 (T. D. 25022), G. A. 5614 (T. D. 25109), G. A. 5965 (T. D. 26150), and, in respect to hats and braids made of artificial or imitation horsehair, in G. A. 6223 (T. D. 26897).

(T. D. 28218—G. A. 6607.)

Jute bagging for cotton.

Certain jute bagging found suitable for covering cotton, and held dutiable at six-tenths of 1 cent per square yard under paragraph 344, tariff act of 1897.—Abstract 10469 (T. D. 27209) overruled.

United States General Appraisers, New York, May 28, 1907.

In the matter of protests 204125, etc., of Sam'l Thompson's Nephew & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise is jute bagging. It was assessed for duty as "plain woven fabrics of single jute

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yarns" at the rate of five-eighths of 1 cent per pound and 15 per cent ad valorem under the provisions of paragraph 341, tariff act of 1897, which reads:

341. Plain woven fabrics of single jute yarns, by whatever name known, not exceeding sixty inches in width, weighing not less than six ounces per square yard and not exceeding thirty threads to the square inch, counting the warp and filling, five-eighths of one cent per pound and fifteen per centum ad valorem; if exceeding thirty and not exceeding fifty-five threads to the square inch, counting the warp and filling, seven-eighths of one cent per pound and fifteen per centum ad valorem.

It is claimed to be properly dutiable as bagging suitable for covering cotton at the rate of six-tenths of 1 cent per square yard under the provisions of paragraph 344 of said act, which reads:

344. Bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton, composed of single yarns made of jute, jute butts, or hemp, not bleached, dyed, colored, stained, painted, or printed, not exceeding sixteen threads to the square inch, counting the warp and filling, and weighiug not less than fifteen ounces per square yard, six-tenths of one cent per square yard.

The sole issue in this case is whether or not the merchandise in question is "suitable for covering" cotton within that language as used in paragraph 344 quoted. Precisely similar merchandise was the subject of consideration by the Board, and subsequently by the United States circuit court for the southern district of New York in White *v.* United States (69 Fed. Rep., 93) acquiesced in in T. D. 16164. Substantially the same merchandise was again under consideration by the Board in Abstract 10469 (T. D. 27209). From an examination of all the facts in this record and the testimony adduced, we are satisfied that the conclusion reached by the Board in Abstract 10469 (T. D. 27209) was error. It satisfactorily appears to us herein that the merchandise the subject of consideration is suitable for covering cotton, and is properly dutiable as claimed.

The protests are sustained, and reliquidation accordingly will follow.

(T. D. 28219—G. A. 6608.)

Reliquidation.

The Board of General Appraisers sustained an importer's protests, holding the merchandise dutiable at the maximum rate provided on goods of that class, excepting those as to which it was ascertainable "from the invoices, samples, or records" that a lower rate was applicable. *Held* that in reliquidating in accordance with this decision the collector was not required to consider any data not supplied by the record made before the Board.

United States General Appraisers, New York, May 28, 1907.

In the matter of protests 136522, etc., of J. H. Thorp & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* This merchandise consists of cotton curtains, table covers, and other similar merchandise. The goods

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were originally assessed for duty at the rate of 45 per cent ad valorem as "manufactures of cotton" under the provisions of paragraph 322 of the tariff act of July 24, 1897, which reads:

322. All manufactures of cotton not specially provided for in this Act, forty-five per centum ad valorem.

They were originally claimed to be dutiable according to count of threads, weight, and value under the applicable provisions of the countable paragraphs of the cotton schedule.

The cases were submitted upon the records. No proof was introduced in support of the protests. Among other conclusions of the Board of General Appraisers was the following:

2. That where the particulars of count of threads, condition, weight, value, etc., necessary to reliquidation can be ascertained from the invoices, samples, or record, reliquidation will proceed at the applicable rates thus ascertained; that as to all items and cases wherein these can not be ascertained from the invoices, samples, or records, the statutory particulars above stated, or any of them, sufficient for reliquidation at the appropriate rate, such reliquidation is for want of proof in support of the protests denied; but in such cases reliquidation at the rate of 40 per cent ad valorem, the maximum rate applicable to such goods as countable cottons, will follow.

On reliquidation, the collector makes return as follows:

I have to state that these entries were reliquidated in strict conformity with the decision of the Board of Appraisers of May 27, 1904 (*supra*), and in the reliquidations, as the invoices failed to state whether the merchandise was bleached, unbleached, or colored, this office applied the rate of 40 per cent ad valorem as directed by the Board in the second holding of said decision. (The second holding is the one quoted above.)

These so-called protests are rejected by this office as not lodged within the statutory time, to wit, within ten days of the liquidations of the entries.

Against such reliquidation these protests were lodged in the following language:

Said merchandise is composed wholly or in chief value of cotton. It is cotton cloth as defined in paragraph 310, being in the piece or otherwise. It is properly dutiable under paragraphs 304 to 309, inclusive, at the rate or rates as therein provided according to count, condition, value. etc., or at most at such rates and the rate or rates as provided in paragraph 313. Under the decision of the General Appraisers, dated May 27, 1904, on protest 61153*f* on this entry, you should have reliquidated the duty at 30 per cent ad valorem, the particulars shown on invoice and entry being sufficient to show that no higher rate could be applicable, but only 30 per cent or some still lower rate.

Other formal matters deemed by us inapplicable are alleged in the protests. No appeal was taken from the original decisions of the Board under which the reliquidations in question were had.

These protests raise the same issues as were decided by the Board in G. A. 5985 (T. D. 26210). On appeal to the United States circuit court for the southern district of New York that decision of the Board was reversed (T. D. 27510). On appeal to the United States circuit court of appeals for the second circuit the decision of the circuit court was reversed and the decision of the Board affirmed (T. D. 28077), the court stating:

Upon reliquidation the collector made return that, as the invoices failed to state whether the merchandise was bleached, unbleached, or colored, he applied the rate of 40 per cent ad valorem as directed by the Board.

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Against this reliquidation the importers protested upon the ground that the collector "should have reliquidated the duty at 35 per cent ad valorem, the particulars shown on the invoice and entry being sufficient to show that no higher rate could be applicable, but only 35 per cent *or some lower* rate." If the facts were as stated in this protest it is manifest that there was the same defect of proof which existed when the Board directed reliquidation at 40 per cent; there is no averment that the invoice and entry were sufficient to show exactly under which specific provision any article should be placed. Some contention is made upon the proof that the collector did not supplement the record before him by sending to the appraiser's office or elsewhere for samples of the goods.

But this was not an original liquidation; the Board upon a case made by the importers had decided that the proper rate was 40 per cent, and gave them one more chance to show exactly under what clause their various goods belonged If the record sent back to the collector from the Board lacked proof sufficient to show this it was for the importers to supply such further evidence as the decision allowed them to produce. Moreover, an examination of the record now before us leads to the conclusion that the samples from the appraiser's office would not have helped the situation unless they were supplemented by evidence of the importers as to the meaning of certain arbitrary letters—"P.," "S. W.," etc.—found upon the invoices. But the decision of the Board admitted no such proof; reliquidation was to be had on the "invoices," "samples," and "record," which we assume means the record already made and which was before the Board.

We concur, therefore, with the Board in the conclusion that there was not sufficient data before the collector to enable him to reliquidate at lesser rates than the 40 per cent, which the Board had already fixed upon "for want of proof in support of the protests."

For the reasons stated by the court these protests are overruled and the decisions of the collector affirmed.

(T. D. 28220—G. A. 6609.)

Carnauba wax.

Carnauba wax held to be free of duty as mineral or vegetable wax under paragraph 695, tariff act of 1897.

United States General Appraisers, New York, May 31, 1907.

In the matter of protests 226004, etc., of Chas. Morningstar & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* The commodity the classification of which is called in question by these protests is invoiced as carnauba wax, and was assessed for duty by the collector as a nonenumerated manufactured article under the provisions of section 6 of the tariff act of 1897. The protestants contend that it should be admitted free of duty as paraffin under paragraph 633 or as a vegetable or mineral wax under paragraph 695.

The name would indicate that the commodity is a wax manufactured from the exudation of the palm by that name found in tropical climates. The testimony of the importers' witnesses is to the effect

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that it is gathered from various plants in Brazil and then treated and bleached with paraffin wax. Its use is for making shoe polish, floor polish, etc.

Two samples were submitted to the chemist connected with the office of the United States appraiser at the port of New York, and his report is as follows:

No. 1613. Sample contains 47 per cent solid paraffin of melting point 60° C.; 53 per cent fatty acid compounds, chiefly unsaponifiable (probably solid alcohols).

No. 1649. Sample contains about 25.50 per cent solid paraffin; 74.50 per cent (by difference) of solid fatty acids unsaponifiable compounds, probably solid alcohols.

It does not appear from this report that the wax is other than of mineral or vegetable origin, and the chemist who made the analysis testified that he was unable to determine definitely, but that he was of opinion that it had been derived, if not entirely, in part from vegetable wax. This, taken with the testimony presented by the importers, we think fairly establishes that it is a vegetable wax with some infusion of paraffin resulting from the process by which it is treated and bleached. We think it therefore comes within the purview of paragraph 695 and should be so classified.

The protests are sustained and the collector is directed to reliquidate the entries accordingly.

(T. D. 28221—G. A. 6610.)

Strung beads.

Beads of metal or glass, temporarily strung, are dutiable at the rate of 45 per cent ad valorem under paragraph 193 or 112, tariff act of 1897, and not at 35 per cent ad valorem under paragraph 408.—G. A. 5878 (T. D. 25891), consecutively affirmed by the United States circuit court in Frankenberg *v.* United States (T. D. 26455), the circuit court of appeals, second circuit (T. D. 27188), and the Supreme Court of the United States (T. D. 28189), followed.

United States General Appraisers, New York, May 31, 1907.

In the matter of protests 5036 *h*, etc., of Henry E. Frankenberg Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The issue presented in the protests now under consideration touches the classification for duty under the tariff act of 1897 of beads in bunches, or beads temporarily strung for convenience of handling and transportation.

The entries covering the goods in question were liquidated on the basis of 45 per cent ad valorem duty under paragraph 193, the importers relying upon the alternative claim that the goods were dutiable at 35 per cent ad valorem under the provision of paragraph 408 for beads loose, not threaded or strung, on the theory that the

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words "threaded or strung" meant in a permanent manner, and that, therefore, beads *temporarily* strung were constructively loose. In G. A. 5878 (T. D. 25891) this Board, after a careful consideration of the same issue as that presented in these protests, decided the question adversely to the importers' contention. This decision upon review was consecutively affirmed by the circuit court for the southern district of New York, the circuit court of appeals, second circuit, and recently by the Supreme Court of the United States, with the result that beads in bunches, or temporarily strung, must be classified for duty at the rate provided in the tariff for manufactures of the material of which the beads are composed; hence it follows that the protests now before us must be and are overruled, the collector's decision in each case being affirmed.

(T. D. 28222—G. A. 6611.)

Wool powder puffs.

Flat pieces of white woolen fabric, circular in shape, varying from 2 to 4 inches in diameter and from one-half to 1 inch in thickness, and used for applying powder to the face and neck, are dutiable as manufactures of wool under paragraph 366, tariff act of 1897, and not as brushes under paragraph 410.

United States General Appraisers, New York, May 31, 1907.

In the matter of protest 123234 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Baltimore.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

LUNT, *General Appraiser:* The merchandise in question is invoiced as "powder puffs." Duty was assessed thereon at the rate of 44 cents per pound and 55 per cent ad valorem under paragraph 366, tariff act of 1897, as manufactures of wool; and it is claimed to be dutiable as brushes at 40 per cent ad valorem under paragraph 410 of said act.

The merchandise consists of flat pieces of white woolen fabric, circular in shape, varying from 2 inches to 4 inches in diameter and from half an inch to an inch in thickness, and used for applying powder to the face and neck.

The question raised in the case before us is identical with that passed upon by the Board in an unpublished decision dated February 24, 1903, wherein it was held that such merchandise is dutiable as brushes. On appeal by the Government, this decision was reversed (T. D. 28142); and conforming to the decision of the court we find the merchandise to be a manufacture of wool and hold it dutiable as assessed.

The protest is overruled and the decision of the collector affirmed.

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(T. D. 28223.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15553.—Aspirator Bottles.—Protest 244119 of Scientific Materials Company against the assessment of duty by the surveyor of customs at the port of Pittsburg. Before Board 1, May 27, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, aspirator bottles were held dutiable under paragraph 99, tariff act of 1897, relating to bottles. G. A. 6429 (T. D. 27584) followed.

No. 15554.—Sea Moss.—Protests 231985, etc., of Berlinger, Brown & Meyer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 27, 1907. Opinion by McClelland, G. A.

G. A. 6464 (T. D. 27670) followed, relating to sea moss.

No. 15555.—Pictorial Post Cards.—Protests 231666, etc., of R. Pierson & Co. *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Fischer, G. A.

Pictorial post cards, classified as printed matter under paragraph 403, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. This contention was sustained in part.

No. 15556.—Books in Foreign Language.—Protests 242505, etc., of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Fischer, G. A.

Merchandise classified as children's books containing illuminated lithographic prints under paragraph 400, tariff act of 1897, were claimed to be either free of duty under paragraph 502 as books printed exclusively in a foreign language, or dutiable under paragraph 403, relating to books. The former claim was sustained as to books having illuminated lithographic prints on the outer coverings only. Note G. A. 6579 (T. D. 28126).

No. 15557.—Crucifixes.—Protest 247248 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Fischer, G. A.

Crucifixes classified as composed in chief value of metal were found to be composed in chief value of wood, as claimed by the importers.

No. 15558.—Featherstitch Braids.—Protests 223905, etc., of Geo. C. Poirier against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 27, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456).

No. 15559.—Silk Veilings.—Protest 221873 of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Howell, G. A.

Protest overruled on the authority of G. A. 6033 (T. D. 26352), relating to silk veilings.

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No. 15560.—Embroidered Articles.—Protest 231287 of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Howell, G. A.

The protest related to ladies' blouses having embroidered insertings, which the Board held to have been properly classified under paragraph 339, tariff act of 1897, as embroidered articles.

No. 15561.—Silk Velvet.—Protest 231288 of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Howell, G. A.

The protest related to velvet, which the Board found to be properly classified as composed in chief value of silk.

No. 15562.—Silk Hosiery.—Protest 242894 of Rice-Stix Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 27, 1907. Opinion by Howell, G. A.

The protest related to hosiery, which the Board found to have been properly classified as composed in chief value of silk.

No. 15563.—Jacquard Goods Having Two Shades in the Filling.—Protests 222990, etc., of R. B. MacLea Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 27, 1907.

Goods classified as silk fabrics under paragraph 387, tariff act of 1897, were claimed to be dutiable under paragraph 391 as Jacquard figured goods containing two or more colors in the filling. Protests overruled.

Howell, *General Appraiser:* * * * The goods are woven fabrics in the piece, composed of silk and cotton. All the warp threads are of cotton, while the filling threads are of silk and cotton. The filling is composed alternately of 12 picks of bleached cotton threads and 10 picks of spun silk. The warp threads have been dyed, but the filling threads have not been dyed. It is conceded by the Government that the fabric is made on a loom with a Jacquard attachment, but the contention is that it contains only one color in the filling. We think this contention is sound. The filling in the fabric is of one color—white. The cotton, being bleached, is a pure white; while the spun silk, which is in its natural condition, is a cream white. Both are white and nothing else. A light and dark shade of one color can not be said to be two colors. It is always one and the same color, varying only in shade. The filling threads have not been treated with any pigment or other coloring matter, and in their natural condition they are white. The fabric does not, therefore, contain two colors in the filling, and in this respect fails to meet the requirements of the provision in paragraph 391 on which the importers rely.

We may add that since the case was heard samples of the goods have been analyzed. The samples were so small that it was difficult to ascertain correctly the proportions of the different materials, but the reports of the analyst raise some doubt as to the goods being in chief value of silk. Of course, if silk is not the component material of chief value, this would be an additional reason for excluding them from said paragraph 391.

No. 15564.—Appliquéed Screens.—Protest 191749 of A. L. Tuska against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 27, 1907. Opinion by De Vries, G. A.

Appliquéed screens were held to have been properly classified under the provision in paragraph 339, tariff act of 1897, for appliquéed articles.

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No. 15565.—Flax Yarn.—Protest 226918 of Barbour Brothers Company against the assessment of duty by the collector of customs at the port of New York Before Board 2, May 27, 1907. Opinion by De Vries, G. A.

Yarn classified as a manufacture of flax under paragraph 347, tariff act of 1897, was claimed to be dutiable under paragraph 331, relating to flax yarns finer than 80 lea in number. Protest overruled, the Board holding the importers' evidence inadequate to sustain the contention made.

No. 15566.—Parts of Collar and Cuff Buttons.—Protests 229424, etc., of A. Lorsch & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 27, 1907. Opinion by Somerville, G. A.

The protests related to incomplete collar or cuff buttons of brass, requiring only to be attached to heads of bone or steel to form complete buttons. They were classified under paragraph 414 as metal parts of collar or cuff buttons at 50 per cent ad valorem, against the importers' contention that they were dutiable under paragraph 193 as manufactures of metal. Protests overruled.

No. 15567.—Dutiable Weight of Tobacco.—Protests 218263, etc., of Selgas, Suarez & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 27, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of United States *v.* Falk (T. D. 27832).

No. 15568.—Leakage.—Protest 217771 of Luyties Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 27, 1907. Opinion by Somerville, G. A.

Protest overruled on the authority of United States *v.* Shaw (T. D. 27226), relating to leakage of wine, spirits, etc.

No. 15569.—Leakage.—Protest 219224 of E. N. Roth against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 15568 (*supra*).

No. 15570.—Leakage.—Protests 221909, etc., of Chas. Meinecke & Co. against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15568 (*supra*).

No. 15571.—Leakage.—Protests 243111, etc., of Joseph Freni *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15568 (*supra*).

No. 15572.—Gauge of Olive Oil.—Protests 237594, etc., of R. U. Delapenha & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 27, 1907. Opinion by Somerville, G. A.

Protests sustained on authority of G. A. 6575 (T. D. 28072), relating to the gauge of olive oil in tins.

No. 15573.—Gauge of Olive Oil.—Protest 213520 of H. J. Heinz Company against the assessment of duty by the surveyor of customs at the port of Pittsburg.

Same as No. 15572 (*supra*).

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No. 15574.—GAUGE OF OLIVE OIL.—Protest 220683 of F. P. Ventrone against the assessment of duty by the collector of customs at the port of Providence.

Same as No. 15572 (*supra*).

No. 15575.—GAUGE OF OLIVE OIL.—Protest 221900 of Mitchell, Fletcher & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15572 (*supra*).

No. 15576.—COMMON YELLOW EARTHENWARE—SARREGUEMINES WARE.—Protest 283308 of C. R. Ruegger against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 27, 1907.

Merchandise classified under paragraph 96, tariff act of 1897, as decorated earthenware was claimed to be dutiable under paragraph 94, relating to common yellow, brown, or grey earthenware. Protest sustained.

HAY, *General Appraiser:* The Appraiser reports the merchandise here in question to consist of earthenware of superior quality, yellow in color, very similar to carmelite ware. * * * The importer testified that the ware is called Sarreguemines earthenware; that it is made from clay taken from the ground in Sarreguemines, Germany. One of the Government witnesses called the ware ivory porcelain of very superior grade, made of a composition clay and finished with a fretting glaze. The other Government witness said that an article of Sarreguemines make would sell at retail for 10 cents, while a similar article of common yellow earthenware would only sell for 3 cents; but both of the witnesses for the Government spoke of the ware as yellow earthenware of a superior quality.

In an unpublished decision on protest 8939 *h*, dated May 13, 1903, the Board held merchandise identical with that here under consideration to be dutiable under paragraph 94 as common yellow earthenware, which decision followed Schade's case, G. A. 5336 (T. D. 24424).

The testimony in this case when carefully analyzed goes no farther than to show that the ware under consideration is a good quality of yellow earthenware. That which was the subject of the Board's decision of May 13, 1903 (*supra*), was from the same factory—identical in appearance and, apparently, in quality. The testimony before us is, in our judgment, insufficient to warrant us in changing the rule established by the case above cited.

No. 15577.—PROTEST ABANDONED.—Protest 247579 of Peter Wright & Sons against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, May 27, 1907.

Protest abandoned; overruled.

No. 15578.—PROTEST ABANDONED.—Protest 247689 of James P. Smith & Co. against the assessment of duty by the collector of customs at the port of New York.

Same as No. 15577 (*supra*).

No. 15579.—PROTEST UNSUPPORTED.—Protest 248889 of Louis Dejonge & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 27, 1907. Opinion by De Vries, G. A.

Protest overruled for want of merit.

No. 15580.—PROTESTS UNSUPPORTED.—Protests 227333, etc., of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News. Before Board 3. Opinion by Somerville, G. A.

Same as No. 15579 (*supra*).

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No. 15581.—PRECIOUS STONES, DRILLED.—Protest 109864 of R. A. Breidenbach against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Drilled balls of tiger-eye were held dutiable under paragraph 435, tariff act of 1897, as precious stones cut but not set, as claimed by the importer. G. A. 6097 (T. D. 26586) followed.

No. 15582.—CHEMICAL GLASSWARE.—Protests 187846, etc., of Eimer & Amend against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protests related to chemical glassware, with respect to which the Board sustained the importers' contentions so far as authorized by the following authorities: G. A. 6429 (T. D. 27584), G. A. 6533 (T. D. 27884), and Eimer *v.* United States (126 Fed. Rep., 439; T. D. 25112).

No. 15583.—JEWELRY—RINGS CONTAINING WATCHES.—Protest 198979 of Klipper Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to finger rings containing diminutive watch movements, which the Board held to have been properly classified under paragraphs 434 and 191, tariff act of 1897, relating to jewelry and watch movements. G. A. 6015 (T. D. 26285) followed.

No. 15584.—STRUNG BEADS.—Protests 53765 *b*–16454, etc., and protests 46266 *b*–15101, etc., of T. Buettner & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protests related to strung beads, which, in accordance with one of the importers' contention, were held dutiable as manufactures of the component of chief value. Frankenberg *v.* United States (T. D. 28189) followed.

No. 15585.—STRUNG BEADS.—Protests 50997 *b*, etc., of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15584 (*supra*).

No. 15586.—STRUNG BEADS.—Protest 164440 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of Frankenburg *v.* United States (T. D. 28189), relating to strung beads.

No. 15587.—STRUNG BEADS—ORNAMENTS.—Protest 53805 *b* of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

As to certain beads and ornaments, the Board sustained the importers' contention that they should have been classified as manufactures of the component of chief value. In all other respects the assessment was affirmed.

No. 15588.—WINE IN SMALL BOTTLES—SAMPLES.—Protest 230132 of H. Racle against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 8, May 28, 1907. Opinion by Somerville, G. A.

The protest related to wine in cases containing 100 and 200 bottles, respectively, each case measuring altogether about 20 pints. The importer contended that the merchandise should have been admitted free of duty as consisting of samples of no commercial value. Protest overruled on the authority of G. A. 5958 (T. D. 26113).

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No. 15589.—STRUNG CORAL BEADS.—Protest 60185 *b*–17430 of Otto Young & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907.

The protest related to coral, assorted as to size, and strung, which was classified as jewelry under paragraph 434, tariff act of 1897.

SHARRETTS, *General Appraiser:* * * * Precious stones and gems, such as opals, garnets, coral, pearls, etc., if permanently strung are unquestionably jewelry, but if temporarily strung would be dutiable at 10 per cent ad valorem under paragraph 435. The importers not having made such a claim, we are constrained to overrule the protest, the collector's decision standing as if affirmed.

No. 15590.—BULL'S-EYE LENSES.—Protest 244214 of Motor Car Equipment Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Bull's-eye lenses suitable for use in automobile lamps were held dutiable as lenses under paragraph 109, tariff act of 1897, as claimed by the importers. G. A. 6463 (T. D. 27669) followed.

No. 15591.—BEADED ELASTIC BELTS.—Protests 246574, etc., of American Bead Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Beaded elastic belts composed in chief value of rubber were held to have been properly classified under paragraph 408, tariff act of 1897, relating to beaded wearing apparel.

No. 15592.—CHRISTMAS-TREE ORNAMENTS.—Protest 223421 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to Christmas-tree ornaments in the form of balls and bunches of grapes, composed of glass gilded and silvered. They are somewhat larger than the ornaments ordinarily used for decorating Christmas trees, but the Board found they are more generally used for that purpose than otherwise, and held them dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 15593.—SPANGLED ARTICLES.—Protest 253690 of D. S. Hesse & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6323 (T. D. 27240), relating to beaded and spangled goods.

No. 15594.—TOY NECKLACES.—Protest 245537 of John V. A. Cattus, protest 244174 of A. J. Hague & Co., and protest 248099 of Hamburger & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

G. A. 6297 (T. D. 27156) followed, relating to toy necklaces.

No. 15595.—TOY NECKLACES.—Protest 244112 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 15594 (*supra*).

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No. 15596.—ENTIRETY—TRAYS AND SALAD BOWLS.—Protest 234778 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to trays composed of decorated earthenware, and to metal and cut-glass salad dishes set in a metal stand. The Board found these articles to be composed in chief value of metal, and held them dutiable as entireties under paragraph 193, relating to manufactures of metal, as claimed by the importers. In other respects the assessment of duty was affirmed.

No. 15597.—CHRISTMAS-TREE STANDS WITH MUSIC BOX.—Protest 242887 of Schwerdtmann Toy Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to revolving stands for Christmas trees, provided with music-box attachments. The importers objected to their classification as musical instruments under paragraph 453, tariff act of 1897, contending that they were dutiable as toys under paragraph 418. Protest sustained. Note G. A. 4679 (T. D. 22096).

No. 15598.—BEADED ARTICLES—LANTERNS AND LAMPS.—Protest 242089-24200 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Beaded lanterns and lamps composed in chief value of colored glass were held to have been properly classified under paragraphs 408 and 100, tariff act of 1897, relating to beaded articles and colored glassware, the importers' contention that they were dutiable as toys being overruled.

No. 15599.—BEADED FRINGES.—Protest 244131 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to fringes, which were held to have been properly classified as beaded articles under paragraph 408, tariff act of 1897.

No. 15600.—PINS—TOY JEWELRY—BEADED ARTICLES.—Protests 227158-23404, etc., of Chas. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, the Board held lace or beauty pins on cards dutiable as manufactures of the component of chief value, on the authority of G. A. 6139 (T. D. 26679), and cheap beaded necklaces dutiable as toys under paragraph 418, tariff act of 1897, on the authority of G. A. 6297 (T. D. 27156). The assessment was affirmed as to other beaded necklaces and as to silk belting studed with metal points.

No. 15601.—BEADED NECKLACES.—Protest 244530-24224 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The Board held necklaces with clasps to have been properly classified under paragraph 408 or 434, tariff act of 1897, relating to beaded articles and to jewelry.

No. 15602.—BEADED CHAINS.—Protest 234757 of A. A. Vantine & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Beaded chains were held to have been properly classified under paragraph 434 or 408, tariff act of 1897, relating to jewelry and beaded articles.

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No. 15603.—Base-Metal Buckles.—Protest 244184 of P. W. Lambert & Co. and protest 247789 of Bailey, Green & Elger against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinions by Sharretts, G. A.

Belt buckles composed of base metal were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers. G. A. 6374 (T. D. 27382) followed.

No. 15604.—Enameled Buckles.—Protest 247832 of China and Japan Trading Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Enameled buckles classified as jewelry were held dutiable under paragraph 159, tariff act of 1897, relating to enameled metal articles, as claimed by the importers.

No. 15605.—Pins.—Protest 244213 of Mills & Gibb and protest 244682 of Strauss Brothers & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinions by Sharretts, G. A.

The protests related to pins, which the Board held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6376 (T. D. 27390) and G. A. 6139 (T. D. 26679) followed.

No. 15606.—Pins—Jewelry.—Protests 244512–24225, etc., of Gage Brothers & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6139 (T. D. 26679) the Board held pins with ornamented heads to have been properly classified as jewelry under paragraph 434, tariff act of 1897.

No. 15607.—Pins—Bracelets.—Protest 248559 of Geo. C. Poirier against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

The protest related to lace pins and bracelets of glass beads, classified at 60 per cent. On the authority of G. A. 6139 (T. D. 26679) the Board held the pins dutiable as manufactures of glass under paragraph 112, tariff act of 1897, the assessment being affirmed in all other respects.

No. 15608.—Protests Abandoned.—Protests 230087, etc., of Ignaz Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 28, 1907. Opinion by Sharretts, G. A.

Protests abandoned; overruled.

No. 15609.—Rejected Teas.—Protest 248427 of Kim Lai Yuen against the assessment of duty by the collector of customs at the port of Washington. Before Board 1, May 31, 1907. Opinion by Lunt, G. A.

Protest overruled on the authority of G. A. 6474 (T. D. 27702), relating to rejected teas.

No. 15610.—Imitation Pearls—Incrusted Stones.—Protest 170562–20058 of of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

The Board held imitation baroque pearls, some incrusted with imitation diamonds, dutiable as imitation precious stones under paragraph 434, tariff act of 1897, as claimed by the importers. G. A. 6088 (T. D. 26554) and G. A. 6342 (T. D. 27292) followed. In all other respects the protest is overruled.

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No. 15611.—ORNAMENTS.—Protests 134909, etc., of Samuel Ach Company *et al.* against the assessment of duty by the surveyor of customs at the port of Cincinnati. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

Certain ornaments covered by protest 134912 were held dutiable as manufactures of metal as claimed by the importers. G. A. 6130 (T. D. 26653) followed. In all other respects the protests were overruled.

No. 15612.—STRUNG BEADS.—Protests 130295, etc., of D. J. Healy against the assessment of duty by the collector of customs at the port of Detroit. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

The Board held beads temporarily strung dutiable as manufactures of glass under paragraph 112, tariff act of 1897, as claimed by the importers.

No. 15613.—SPANGLED ARTICLES.—Protest 252190 of Sullivan, Drew & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

Protest overruled on the authority of G. A. 6323 (T. D. 27240), relating to spangled articles.

No. 15614.—LACE PINS.—Protests 247829, etc., of Calhoun, Robbins & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

The protest was sustained as to lace pins on the authority of G. A. 6139 (T. D. 26679), but were overruled in all other respects.

No. 15615.—TOY JEWELRY.—Protests 246570, etc., of American Bead Company and protests 246604, etc., of A. J. Hague & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinions by Sharretts, G. A.

The protests related to jewelry, a portion of which was held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 15616.—PINS.—Protest 244694 and protest 244695 of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, the Board held pins dutiable as manufactures of the component of chief value. Note G. A. 6139 (T. D. 26679).

No. 15617.—BRASS SWIVELS.—Protests 244638, etc., of C. B. Richard & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6330 (T. D. 27255), relating to brass swivels.

No. 15618.—RECONSTRUCTED RUBIES.—Protest 244195 of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6336 (T. D. 27275), relating to reconstructed rubies.

No. 15619.—PINS—ORNAMENTS—JEWELRY.—Protest 243997 of Dieckerhoff, Raffloer & Co., protests 244211, etc., of A. D. Matthew's Sons *et al.*, protests 244380, etc., of Royal Metal Manufacturing Company *et al.*, protests 203526, etc., of Samstag & Hilder Brothers *et al.*, and protests 244416, etc., of H. Wolf & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinions by Sharretts, G. A.

In these decisions the Board sustained the contentions of the importers as to portions of the merchandise on the authority of G. A. 6139 (T. D. 26679), G. A. 6374 (T. D. 27382), and G. A. 6376 (T. D. 27390) relating to pins, ornaments, etc., which had been classified as jewelry.

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No. 15620.—Fan Chains—Pins.—Protest 223686 of Guthman, Solomons & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Sharretts, G. A.

Celluloid pins and base-metal fan chains were held dutiable as manufactures of the component material of chief value as claimed by the importers. Note Abstract 5635 (T. D. 26248).

No. 15621.—Dyed Wood—Wood Squares.—Protest 242896 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 31, 1907. Opinion by McClelland, G. A.

So-called dyed strips and wood squares, which were classified as manufactures of wood under paragraph 208, tariff act of 1897, were claimed to be dutiable as unenumerated articles under section 6. Protest overruled on the authority of G. A. 4984 (T. D. 23254).

No. 15622.—Artificial Fruits—Decorated Earthenware.—Protest 232297 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 31, 1907. Opinion by McClelland, G. A.

The merchandise in question was held to have been properly classified under paragraphs 425 and 95, tariff act of 1897, relating to artificial fruits and flowers, and to decorated earthenware.

No. 15623.—Patent Drier—Paint.—Protest 223423 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, May 31, 1907. Opinion by McClelland, G. A.

Merchandise similar to the so-called crown patent drier covered by G. A. 3257 (T. D. 16539), and used exclusively as a drier for paints, inks, etc., was held dutiable as paint under paragraph 58, tariff act of 1897, as claimed by the importers.

No. 15624.—Granite Monuments.—Protests 225520, etc., of W. C. Townsend & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, May 31, 1907. Opinion by McClelland, G. A.

Protests overruled on the authority of Baldwin *v.* United States (T. D. 27066), relating to granite monuments.

No. 15625.—Trout Flies.—Protest 248217 of Whitney Sporting Goods Company against the assessment of duty by the surveyor of customs at the port of Denver. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

The protest related to trout flies which the Board held to have been properly classified as manufactures of metal under paragraph 193, tariff act of 1897.

No. 15626.—Metal Nippes.—Protest 243642 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 12433 (T. D. 27550), relating to metal nippes.

No. 15627.—Dolls' Bodies.—Protest 232099 of Schwerdtmann Toy Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 10336 (T. D. 27182), Abstract 12381 (T. D. 27545), and G. A. 4999 (T. D. 23303), relating to dolls' bodies.

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No. 15628.—BEADED ARTICLES—TRIMMINGS.—Protest 231664 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

The merchandise was held to have been properly classified under paragraphs 390 and 408, tariff act of 1897, relating to trimmings and galloons of silk and to beaded wearing apparel. Note G. A. 5923 (T. D. 26049) and G. A. 6528 (T. D. 27868).

No. 15629.—PRINTED MATTER.—Protest 222063 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907.

The merchandise in question, which was classified as printed matter under paragraph 408, tariff act of 1897, was claimed to be free of duty under paragraph 502, relating to books printed exclusively in a foreign language. Protest sustained.

FISCHER, *General Appraiser:* The merchandise consists of loose unfolded sheets printed in a foreign language. * * * We find from the testimony and the sample admitted in evidence that these sheets are loose, unfolded, and unbound, with the printed text, which is in the German language, so arranged that when folded the sheets will form 8 leaves or 16 pages of printed matter in due numerical sequence. These signatures are all assembled in order, and when folded and fastened together would form the German reader represented by the illustrative Exhibit A, which is offered in evidence by the importers. These unfolded but assembled sheets are distinguishable from the printed matter the subject of G. A. 3986 (T. D. 18530) and subsequent decisions of the Board rendered on its authority. In said decision it was held that printed sheets, in order to be considered as books, must be stitched or otherwise fastened together or else assembled together in a cover, to give the article character and completeness as a book. Following this the Board held, in Abstract 3934 (T. D. 25825), that loose unfolded printed sheets of a German hymn book were not classifiable as books printed in a foreign language, but properly dutiable as printed matter at 25 per cent under paragraph 408 of the tariff. Likewise, in Abstract 7244 (T. D. 26559), unfolded loose sheets *which were not arranged in the order of binding* were held to be dutiable as printed matter.

In Abstract 12386 (T. D. 27545) books imported in sheets, folded, ready to be bound but not fastened together, were held to be books printed exclusively in a foreign language under paragraph 502, on the authority of G. A. 4963 (T. D. 23177). This authority holds that unbound books without covers but otherwise complete and folded ready for binding are within the meaning of the tariff provisions for books. The fact that the printed sheets under consideration are loose, unbound, and without covers may therefore be disregarded. Such conclusion is on the authority of Macmillan Company *v.* United States (116 Fed. Rep., 1018), wherein printed sheets of an English work on anatomy, imported unbound and comprising all the book except the first few pages were held admissible as a scientific book. Note, also, *In re* Hempstead (95 Fed. Rep., 967); affirmed (103 Fed. Rep., 197). What remains to be considered is whether the unfolded condition in which these articles arrive justifies their return as printed matter. These sheets are arranged in the order of binding, and though unfolded, they are nevertheless in their assembled state to be considered as books and are sufficiently complete to assume character as such.

No. 15630.—SILK HEMSTITCHED HANDKERCHIEFS.—Protests 231283, etc., of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under paragraph 388, tariff act of 1897, as silk hemstitched handkerchiefs.

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No. 15631.—LACE NECKWEAR.—Protests 244001, etc., of M. H. Frank & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 31, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 5866 (T. D. 25844), relating to lace neckwear.

No. 15632.—COTTON YARN.—Protest 229488 of Eddy & Street against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, May 31, 1907. Opinion by De Vries, G. A.

Cotton yarn classified as 76 lea was found to be 70 lea, as claimed by the importers.

No. 15633. — SCOURING CLOTHS.—Protest 248485 of Adolf Fricke against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 31, 1907. Opinion by De Vries, G. A.

Scouring cloths, composed of cotton and jute and of cotton and paper, which were classified as manufactures of cotton under paragraph 322, tariff act of 1897, were claimed to be dutiable as cotton cloths. Protest overruled. Note G. A. 5018 (T. D. 23848) and G. A. 5447 (T. D. 24725).

No. 15634.—MANUFACTURES OF COTTON.—Protest 244199 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 31, 1907. Opinion by De Vries, G. A.

Goods classified as composed in chief value of flax were claimed to be composed chiefly of cotton. This contention was sustained as to one quality.

No. 15635.—FIGURED COTTON CLOTH.—Protests 179387, etc., of H. Robinson *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 31, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15636.—PLUSH STRIPS.—Protest 150384 of H. Schloss against the assessment of duty by the collector of customs at the port of New York. Before Board 2, May 31, 1907. Opinion by De Vries, G. A.

Narrow strips of plush classified as plush ribbons under paragraph 386, tariff act of 1897, were held dutiable under the provision in the same paragraph for plush, as claimed by the importer. G. A. 6602 (T. D. 28201) followed.

No. 15637.—WAFERS.—Protests 230188, etc., of Lathrop Company against the assessment of duty by the collector of customs at the port of Hartford. Before Board 3, May 31, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of United States *v.* Meadows (T. D. 28004).

No. 15638.—WAFERS.—Protest 216783 of Chandler & Rudd Company against the assessment of duty by the collector of customs at the port of Cleveland.

Same as No. 15637 (*supra*).

No. 15639.—WAFERS.—Protests 186259, etc., of T. P. Jonghin & Co. *et al.* against the assessment of duty by the surveyor of customs at the port of Galveston.

Same as No. 15637 (*supra*).

No. 15640.—WAFERS.—Protests 149225, etc., of Jos. R. Peebles' Sons Company against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Same as No. 15637 (*supra*).

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No. 15641.—Dried Fungus—Protests 135034, etc., of Wing Mow Lung & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, May 31, 1907. Opinion by Waite, G. A.

G. A. 6184 (T. D. 26812) followed, relating to dried fungus.

No. 15642.—Dried Mushrooms.—Protests 189656, etc., of Chaskel Weinberg *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 31, 1907. Opinion by Waite, G. A.

Zanmati *v.* United States (T. D. 28054) followed, relating to dried mushrooms.

No. 15643.—Sliced Mushrooms.—Protests 184001, etc., of A. Zanmati & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 31, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of Zanmati *v.* United States (T. D. 28054), relating to sliced mushrooms.

No. 15644.—Reciprocity—Country of Exportation.—Protest 243684 of Hermann Schmidt against the assessment of duty by the collector of customs at the port of Richmond Before Board 3, May 31, 1907. Opinion by Somerville, G. A.

The Board held that certain wine was not subject to the reciprocal agreement with Spain, because it did not appear that it was produced in Spain. Migliavacca Wine Company *v.* United States (T. D. 26777) followed.

No. 15645.—American Shooks.—Protest 247201 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, May 31, 1907. Opinion by Somerville, G. A.

The goods were claimed to be free of duty under paragraph 483, tariff act of 1897, as American shooks. Protests overruled for failure to comply with the Treasury regulations.

No. 15646.—Gauge of Olive Oil.—Protests 219745–23039, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of Chicago. May 31, 1907.

Same as No. 15572 (*supra*).

No. 15647.—Dutiable Weight of Tobacco.—Protests 250645, etc., of E. Spingarn & Co. *et al.* May 31, 1907.

Same as No. 15567 (*supra*).

No. 15648.—Mineral Water in Bottles.—Protest 231139 of Henry Shierer against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 31, 1907. Opinion by Somerville, G. A.

The question was whether mineral water was contained in bottles holding over 1 pint, as classified, or less, as claimed by the importer. Protest sustained.

No. 15649.—Sugar Bounty.—Protest 60816*f* of American Sugar Refining Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, May 31, 1907. Opinion by Somerville, G. A.

The importers contended that the countervailing duty of 2.50 marks per 100 kilos assessed to equal the German bounty should have been 2.40 marks. Protest overruled

No. 15650.—Articles of Earthenware—Metal.—Protest 243627 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, May 31, 1907. Opinion by Hay, G. A.

Articles classified as composed in chief value of decorated earthenware under paragraph 96, tariff act of 1897, were claimed to be dutiable as manufactures of metal under paragraph 193. Protest sustained.

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No. 15651.—PROTESTS UNSUPPORTED.—Protest 236966 of Rud C. Hahn & Co. and protests 245552, etc., of Jas. G. Johnson & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1 May 31, 1907. Opinions by Sharretts, G. A.

Protests overruled for want of merit.

No. 15652.—PROTESTS UNSUPPORTED.—Protest 176128-20382 of A. Kunstadter protests 179097-20457, etc., and protest 205649-21115 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15651 (*supra*).

No. 15653.—PROTESTS ABANDONED.—Protests 247635, etc., of Lee Tai Lung *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, May 31, 1907. Opinion by Lunt, G. A.

Protests abandoned.

No. 15654.—PROTEST UNSUPPORTED.—Protest 227409-23821 of Richard T. Simanowsky against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, May 31, 1907. Opinion by Lunt, G. A.

Protest overruled for want of merit.

No. 15655.—PROTEST UNSUPPORTED.—Protest 247878 of W. W. Thomas & Co. against the assessment of duty by the collector of customs at the port of New York. Opinion by McClelland, G. A.

Same as No. 15654 (*supra*).

No. 15656.—PROTEST UNSUPPORTED.—Protest 247564 of Hubbard Spencer Bartlett Company against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

Protest overruled for want of merit.

No. 15657.—PROTEST UNSUPPORTED.—Protest 242048 of F. A. Bonnet against the assessment of duty by the collector of customs at the port of Eagle Pass. Before Board 3, May 31, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 15658. — PROTEST UNSUPPORTED. — Protest 225768 of Hoffman & Greenlee against the assessment of duty by the collector of customs at the port of Los Angeles.

Same as No. 15657 (*supra*).

No. 15659.—PROTEST UNSUPPORTED.—Protest 251486 of A. E. Colburn against the assessment of duty by the collector of customs at the port of Los Angeles. Opinion by Hay, G. A.

Same as No. 15657 (*supra*).

No. 15660.—STRUNG BEADS.—Protests 151405, etc., of Joel Bailey Davis Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. May 31, 1907.

Same as No. 15584 (*supra*).

No. 15661.—STRUNG BEADS.—Protest 138366 of Callender, McAuslan & Troup Company against the assessment of duty by the surveyor of customs at the port of Providence. May 31, 1907.

Same as No. 15584 (*supra*).

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No. 15662.—STRUNG BEADS.—Protests 132506, etc., of A. L. Hettrick & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. May 31, 1907.

Same as No. 15584 (*supra*).

No. 15663.—STRUNG BEADS.—Protests 100479, etc., of Geo. Borgfeldt & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. May 31, 1907.

Same as No. 15584 (*supra*).

(T. D. 28224.)

Unsigned stock certificates.

Unsigned stock certificates of foreign manufacture subject to the payment of duty.

TREASURY DEPARTMENT, *June 1, 1907.*

GENTLEMEN: The Department is in receipt of your letter of the 21st ultimo, requesting information relative to the sending of unsigned stock certificates, printed in Canada, to this country to be signed by the officers of the issuing corporation and thereafter returned to Canada.

The Department has repeatedly held that unsigned blank forms for stock certificates, bonds, and other securities, whether or not partially filled out, are subject to the payment of duty upon importation into the United States, and that there is no provision of law under which the same might be entered in bond, and, after having been signed, exported without payment of duty thereon.

Upon such certificates being sent to this country for signatures the same should, therefore, be regularly entered as other merchandise; and after payment of duty thereon the same will be promptly delivered from customs custody, and may be used for any purpose desired.

Respectfully, JAMES B. REYNOLDS,
(19787.) *Acting Secretary.*

NATIONAL TRUST COMPANY, *Montreal, Canada.*

(T. D. 28225.)

Marking—Country of origin.

Souvenir postal cards which are usually and ordinarily marked must be marked to indicate the country of origin under section 8, act of 1897. Cards not usually marked are not required to be marked with the country of origin.

TREASURY DEPARTMENT, *June 7, 1907.*

SIR: The Department is in receipt of your letter of the 18th instant, relative to the marking under sections 8 and 11 of the act of July 24, 1897, of souvenir postal cards, dinner cards, sometimes called place cards, and menu cards.

Section 8 of said act provides that all articles of foreign manufacture such as are usually or ordinarily marked, stamped, branded, or

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labeled shall also be plainly marked, stamped, branded, or labeled in legible English in a conspicuous place so as to indicate the country of their origin. It is not the meaning of said section that only articles usually marked, with the name of the country of origin thereof shall be so marked upon importation, but it is the intention of said section that articles which are usually or ordinarily marked, stamped, branded, or labeled in any manner, shall also be similarly marked so as to indicate the country of their origin.

It is the observation of the Department that souvenir postal cards bearing pictures of places and objects or otherwise are usually and ordinarily marked with the name of the place or object represented, and that the menu cards and dinner cards referred to, which usually bear pictures of ideal heads, figures, or landscapes, are not usually so marked.

The Department is, therefore, of the opinion that souvenir postal cards of the kind ordinarily marked with the names of the printers, or of the place or object represented thereby, should also be marked with the name of the country of origin, under the provisions of said section 8 of the act of 1897, and that dinner cards and place cards not usually or ordinarily so marked do not fall within the provisions of said section.

All of such cards, however, which bear a name or mark which is calculated to induce the public to believe that the same are manufactured in the United States are prohibited entry under the provisions of section 11 of said act, and will not be delivered from customs custody unless the name of the country of origin thereof appear upon the same surface and in close proximity to the words indicating the same to be of domestic origin.

Cards marked with the name of a domestic dealer or manufacturer, followed by the names of an American and foreign city, viz, "John Doe & Co., Philadelphia, Pa., and Berlin, Germany," are, in the Department's opinion, so marked as to induce the public to believe the same to be of domestic manufacture, and should not be delivered from customs custody until the words "made in ———," with the name of the country of origin, be printed or stamped in close proximity to the name of such dealer or firm and on the same surface therewith, notwithstanding that the country of origin may appear elsewhere upon the card.

Respectfully, J. H. EDWARDS,
(12969.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28226.)

Additional list of customs notaries.

[Omitted from this edition.]

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(T. D. 28227.)

Outage—Liquors in casks.

In making allowance for outage upon liquors in casks, under T. D. 26547, each cask should be considered separately.

TREASURY DEPARTMENT, *June 10, 1907.*

SIR: The Department is in receipt, by reference from the Auditor for the Treasury Department, of your letter of the 27th ultimo, relative to the liquidation of your warehouse entry No. 83 of April, 1907, covering 14 casks of whisky.

The casks in question are invoiced as 12 octaves and 2 quarter casks, Scotch whisky, containing an aggregate of 402 American gallons. The same are returned by the gauger as having capacities ranging from 24½ to 52 gallons, with a total capacity of 408 gallons, and with outages ranging from one-half to 1½ gallons, with a total outage of 10½ gallons, and as the total outage returned by the gauger is greater than 2½ per cent of the invoice quantity the entry was liquidated upon the total net gallons returned by the gauger under T. D. 26547 of June 27, 1905.

As the duties upon each cask entered may be paid separately upon withdrawal from warehouse being made, and as it may be that a loss of one half the contents of one cask in an importation might be clearly due to leakage, and yet, because of the remainder of the casks being unusually well filled, the total outage would be less than 2½ per cent of the quantity shipped, each cask must be considered separately in the liquidation of the duties.

The entry in question is herewith returned and you are instructed to reliquidate the same, making allowance for outage under T. D. 26547 of June 27, 1905, and T. D. 27379 of May 28, 1906, upon each cask separately.

Respectfully, BEEKMAN WINTHROP,
(14251.) *Acting Secretary.*

SURVEYOR OF CUSTOMS, *Denver, Colo.*

(T. D. 28228.)

Drawback on sweet chocolate.

Drawback on sweet chocolate manufactured by Stollwerck Brothers.

TREASURY DEPARTMENT, *June 11, 1907.*

SIR: Department's instructions of July 12, 1900 (T. D. 22347), authorizing the allowance of drawback on sweet chocolate manufactured by Rockwood & Co., of New York, in part from imported hard refined sugar, are hereby extended, as far as applicable, to cover like exportations of sweet chocolate by the Stollwerck Brothers, provided that the quantity of refined sugar shall in no case exceed the quantity shown in their sworn statement of May 27, 1907, transmitted herewith for filing in your office.

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The manufacturers may file from time to time a sworn schedule of new brands of chocolate they manufacture for export, in the same form as the schedule contained in said sworn statement above-mentioned.

Respectfully, JAMES B. REYNOLDS,
(5957 *i.*) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28229—G. A. 6612.)

Swords with bone handles.

Swords with bone handles, from Japan, though used largely for ornamental purposes, are dutiable under the specific provision for swords in paragraph 154, tariff act of 1897. Those of smaller size are dutiable as side arms under the same provision. When articles are provided for by name in the tariff they are dutiable under such provision regardless of the use to which they are put. The testimony showed that the goods are and always have been known as swords, and that there is a usage established in customs practice extending over twenty-four years of assessing them for duty as swords.

United States General Appraisers, New York, June 10, 1907.

In the matter of protests 226304, etc., of John V. A. Cattus *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of so-called bone swords. Duty was assessed thereon at the rate of 35 per cent ad valorem, under the provisions of paragraph 154 of the tariff act of 1897, which reads as follows:

Swords, sword-blades, and side-arms, thirty-five per centum ad valorem.

The importers claim that the articles are more properly dutiable under the provisions of paragraph 449 of the tariff, at the rate of 30 per cent ad valorem, as articles in chief value of bone, or at the rate of 20 per cent ad valorem under section 6, as unenumerated manufactured articles. There is no dispute but that the provisions of paragraph 154 apply if the imported articles are swords or side arms, and we are therefore to determine whether or not they fall within that designation.

On the evidence and an examination of the samples we find that the articles are actually swords and side arms, as those terms are employed in ordinary understanding, and the testimony of the several witnesses called by the importers shows clearly that the goods have always been called swords—bone swords—by them, and never by any other designation. H. K. Tetsuka, a member of the protesting firm of Morimura Brothers, testified as follows:

Q. What general term do you know that class of merchandise as?—A. Bone swords.

Q. What name is usually applied by the trade when they want articles like that?—A. Bone swords.

Takeo Nakayama, of the same firm, testified as follows:

Q. Does that mean a sword to you? * * * —A. That means a sword—bone sword. * * *

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Carl J. Deutsch, of the China and Japan Trading Company, another protestant, was also a witness. The following questions were asked and answers given:

Q. Do you import among other goods so-called bone swords?—A. Yes.
Q. How are these goods known in your trade?—A. As bone swords.
Q. Did you ever know them to be called anything else but swords?—A. No, sir.
Q. How many years have you been connected in this business?—A. Eighteen years.

Thus it seems that for at least eighteen years these articles have been dealt in under the name of bone swords, and it also seems that the tariff acts of 1883, 1890, and 1894, provided for swords, sword blades, and side arms, at the same rate and in the same language as the present act. It furthermore appears that during all that period of twenty-four years the importers have never raised a question about the classification as swords or side arms, and that it is now raised for the first time. In addition to the fact that it is admitted that they are swords, this long-established custom should militate against the protestants.

In the case of Burditt *v.* United States (reported in T. D. 28109) the circuit court of appeals for the first circuit reversed the circuit court and the Board, and indorsed a confessedly erroneous interpretation of paragraph 137 of the act of 1897, on the ground that the Treasury Department had five years before instructed customs officers in the terms of the erroneous interpretation, and this short period was held by the court sufficient to establish a prescriptive right on the part of the importers to avoid the payment of the duties imposed by the statute. In view of this ruling the many years during which these articles have been assessed as swords seems sufficient to establish a practice.

We can see no force in the contention of the importers' counsel that the name "bone sword" implies a designation which takes the article out of the class called swords, and that the tariff provision covers swords without words of further description, for this would exclude broadswords, cutlasses, rapiers, and other varieties of swords. In fact descriptive names of varieties of articles do not remove such articles from a designated class, as for instance, featherstitch braids are dutiable as braids. Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456); G. A. 6404 (T. D. 27506). Chiffon velvets were held to be dutiable as velvets. G. A. 6275 (T. D. 27057). Torchon, Battenberg, and other laces are dutiable as lace.

The further contention of the importers' counsel that the articles are unfit for use as weapons of war will not alter their classification. This Board has held that oriental swords, pistols, and battle-axes, which were assessed as manufactures of metal, were dutiable specifically under paragraph 154. In that case in an unpublished decision April 1, 1902, in the matter of protest 72014*f*, this Board said:

The articles have the appearance of being old, and it is contended on the part of the Government that they are intended for use as ornaments. This fact is immaterial, however, for they are unquestionably side arms.

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In G. A. 5404 (T. D. 24621), certain antique pistols unfit for use as pistols were held to be dutiable as side arms, and the Board in sustaining the protest said:

The act does not limit the provision for side arms to those articles answering that description when only serviceable and of modern pattern. Any article, if a side arm, is dutiable under the provision by reason of its name and recognition as of that class * * * it must be concluded that the articles in question, although of antique pattern and unfit for their normal use, are still pistols.

The case of the China and Japan Trading Company (71 Fed. Rep., 864) is not analogous to the case at bar. The merchandise in that case consisted of so-called giant umbrellas, articles made from paper, which by reason of their size and material were incapable of use as umbrellas, and only bore the name umbrellas because of their shape; while in this case we have articles in exact shape and size of the common type of sword used in Japanese warfare, differing only in the fact that the blade is not a high-grade steel and that the handles are elaborately carved by hand. Like the oriental swords and antique pistols, they may not be used in warfare, but they are swords and side arms nevertheless. In addition to the reasons hereinbefore given, the further fact should be mentioned that the evidence before us does not properly disclose the value of the component materials. The only evidence offered is hearsay and nothing more.

Upon all of the grounds stated, we overrule the protests and affirm the decision of the collector in each case.

(T. D. 28230—G. A. 6613.)

Iron and nickel plates or sheets.

1. Sheets of iron or steel exceeding No. 10 wire gauge in thickness are expressly excluded from classification under paragraph 131, tariff act of 1897, by reason of the proviso thereto, and welding one sheet of metal on top of another sheet or plate is not coating within the meaning of paragraph 132 of said act. Hence, composite sheets of iron and nickel made by welding a sheet of nickel on a plate of iron three-eighths of an inch thick, and then rolling down the article thus formed to the required thinness, do not fall primarily within the terms of paragraph 131, nor are they the coated metal provided for in paragraph 132. They are dutiable under the provisions of paragraph 193 as manufactured articles of iron and nickel, not specially provided for.—G. A. 5754 (T. D. 25496); G. A. 6553 (T. D. 27963); Abstract 2648 (T. D. 25526), affirmed without opinion (suit 3653; T. D. 27666). September 22, 1906, and Abstract 6678 (T. D. 26390), affirmed without opinion (suit 4041; T. D. 27502), June 20, 1906, cited and followed.

2. A protest that merely recites a paragraph which provides a number of different rates of duty without specifying which rate is claimed is insufficient.—Boker *v.* United States (145 Fed. Rep., 1022; T. D. 27192), affirming 140 *id.*, 115 (T. D. 26451), and G. A. 5879 (T. D. 25892) cited and followed.

United States General Appraisers, New York, June 10, 1907.

In the matter of protests 124015, etc., of Hermann Boker & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* These protests seek to question the correctness of the collector's action in assessing duty at the rate of

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45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897, on certain rolled sheets of metal composed of iron and nickel. The claim in some of the protests reads as follows:

We claim that the said goods are properly dutiable under provision of paragraphs 131 and 132 of the tariff act of July 24, 1897.

In others of the protests the language is somewhat amplified so as to claim "the appropriate specific rate under paragraph 131" according to gauge, "with two-tenths cent per pound additional under paragraph 132 for coating."

By agreement of counsel on both sides, the testimony taken in the matter of protest 191504, decided February 26, 1907, G. A. 6553 (T. D. 27963), covering precisely similar goods imported by the same importers, was incorporated into and forms part of the record in the cases now before us. The testimony referred to is that of the head of the importing firm, who was the only witness called, and it absolutely and convincingly establishes that in no event could this merchandise be properly classified for duty under paragraph 131. Said paragraph reads in part as follows:

131. Sheets of iron or steel, common or black, of whatever dimensions, and skelp iron or steel, valued at three cents per pound or less; * * * *Provided*, That all sheets of common or black iron or steel not thinner than number ten wire gauge shall pay duty as plate iron or plate steel.

The proviso quoted has, of course, the effect of excluding from the operation of paragraph 131 all sheets of iron or steel exceeding 10 wire gauge, equivalent to about one-eighth of an inch in thickness. At the hearing the importer testified that he was familiar with the process by which these articles are produced and that he had personally seen them made, and he stated that said process consists of taking a plate of iron or steel *three-eighths of an inch thick*, welding on one side or both sides thereof, as the case may be, a sheet of nickel, and then rolling this composite article of iron or steel and nickel down to the thickness in which they are imported. It is obvious from this description that the articles are without the scope of paragraph 131; for they are made, not from sheets, as limited by paragraph 131, but from plates that are expressly excluded from classification thereunder. In other words, at no stage of the process of manufacture, nor at any period of their existence, were these articles "common or black sheets of iron or steel" as defined by the provision of the tariff under which the importers claim they are dutiable. They are not as imported, and never were, iron or steel sheets. They are composite plates of iron and nickel rolled down, so that, even if the process of welding a sheet of nickel to a plate or sheet of iron were coating within the meaning of paragraph 132, a claim that has been repeatedly denied by the Board and twice by the courts, the protests would still be untenable, for they would not

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then be coated or plated common or black sheets of iron. To fall within the provisions relied on by the importers, the coating or plating must be made on such sheets only, and if made on any other material those provisions do not apply.

In G. A. 5754 (T. D. 25496), G. A. 6553 (T. D. 27963), Abstract 2648 (T. D. 25526), and Abstract 6678 (T. D. 26390) the Board overruled the contention that welding one sheet of metal on another sheet or plate was coating within the meaning of paragraph 132, and on appeal the last two decisions were affirmed by the circuit court. See suit 3653 (T. D. 27666) and suit 4041 (T. D. 27502). We adhere to the conclusion therein announced. In his testimony in the matter of the protests decided in G. A. 5754 (*supra*) the same importer declared that—

> In the trade under plated ware, or plated articles, it is generally understood that they are plated by electrotype process—electrolysis. When selling this metal—and they call it plated metal—we frequently call their attention to the fact that it is not plated metal as they understand it—that is, produced by electrolysis—but that it is sheets of iron or steel coated with a heavy coating of metals produced by another process.

Finally, the protests before us are insufficient in view of the ruling in Boker *v.* United States (145 Fed. Rep., 1022; T. D. 27192, affirming 140 *id.*, 115; T. D. 26451; and G. A. 5879; T. D. 25892).

In view of the foregoing considerations and on the authorities cited, we overrule the protests on the grounds (1) that the articles are not and never were common or black iron or steel sheets; (2) that they are not coated sheets, welding not being coating, and (3) that the protests are insufficient in that they do not point out the rate of duty or the particular provision of law applicable. The decision of the collector is affirmed in each case.

(T. D. 28231—G. A. 6614.)

Clerical error.

1. Clerical Error—Shipment of Wrong Goods.

   Where merchandise different from that ordered and invoiced is shipped and is entered for duty as invoiced it does not constitute such a clerical error as the Board of General Appraisers can correct.

2. Same—Obligation of Importer.

   If an importer receives and accepts merchandise other than and different from that ordered by him and invoiced to him, he assumes all the obligations in the payment of duty and additional duty which the law imposes upon him.

United States General Appraisers, New York, June 11, 1907.

In the matter of protest 244203 of Magnus & Lauer against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (Waite, Somerville, and Hay, General Appraisers).

Hay, *General Appraiser:* The protestants in this case seek relief for a clerical error, relying upon Crook's case, G. A. 5877 (T. D. 25890), and Macomber & Whyte Rope Company's case, Abstract 12239

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(T. D. 27493). In the former case the error complained of was made in entering the merchandise, and in the latter the error was made in making out the invoice, while in the case at bar such mistake as has occurred was in the filling of the order and the shipment of the merchandise. The facts are as follows:

The importers ordered from Cannes, France, 300 pounds of oil of geranium, Turkish; also 25 pounds of oil of geranium, Algerian. The two were shipped together; the one was invoiced as oil of geranium, Algerian, at a value of 11 francs, and the other as oil of geranium, Turkish, at a value of 5.50 francs. Upon this invoice the importers entered the merchandise to correspond with the invoice description. When examined by the appraiser, the oil invoiced as Turkish was found to be Algerian and advanced to the same value as that at which the oil of geranium, Algerian, was invoiced. Upon this advance the collector assessed the additional duty provided for in section 32 of the tariff act of 1897.

From this it is apparent that the mistake was made in filling the order. The merchandise was invoiced as it was ordered and was entered as it was invoiced, but it was found upon examination to be different merchandise from that invoiced and entered. The wrong goods were shipped. This is not such a clerical error as the Board has ever assumed power to correct. The importers' remedy was in not receiving or accepting the merchandise. They had ordered but 25 pounds of Algerian geranium oil; assumably they did not want 300 pounds of that commodity. They were certainly under no obligation to accept it. If they do accept it they assume all the obligations in the payment of duty and additional duty which the law imposes upon them.

The protest is overruled.

(T. D. 28232—G. A. 6615.)

Steel—Cold rolled—Smoothed only.

Cold-rolled steel strips, the only surface polish or brightening on which has been incidentally acquired in the process of cold rolling, are not subject to additional duty at 1 cent per pound under paragraph 141, tariff act of 1897.—United States *v.* Crucible Steel Company (T. D. 28106), affirming 147 Federal Reporter, 637 (T. D. 27446), and G. A. 6213 (T. D. 26870) cited and followed.

United States General Appraisers, New York, June 11, 1907.

In the matter of protests 3614 *h*, etc., of Washburn Wire Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise to which these protests relate consists of steel strips upon which duty at 1 cent per pound was assessed under the provisions of paragraph 141, tariff act of 1897, in addition to the regular duty under paragraphs 135

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and 137, respectively. The importers claim that the goods have not been "cold rolled * * * or polished by any process to such perfected surface finish or polish better than the grade of cold rolled, smoothed only," * * * and hence that they are not subject to such additional duty.

The precise question raised by these protests has been, after protracted litigation, decided in favor of the contention of the importers, it being held, substantially, that the surface finish which has been acquired incidentally in the process of cold rolling the articles to the required gauge is not the "perfected surface finish or polish" that subjects the strips, plates, or sheets possessing it to the additional cent per pound imposed by paragraph 141. The latest decision to this effect is in the case of United States *v.* Crucible Steel Company (T. D. 28106), wherein the circuit court of appeals for the second circuit affirmed without opinion the decision of the court below (147 Fed. Rep., 537; T. D. 27446), which had in turn affirmed the decision of the Board, G. A. 6213 (T. D. 26870), reversing the action of the collector in assessing the additional duty of 1 cent per pound. The circuit court said, per Lacombe, *J.:*

> I can not see that the additional evidence as to trade designation differentiates this case from that which was before the court of appeals. That court disposed of the questions presented upon the theory that Congress used the terms it employed with the meaning which had been theretofore given them by the customs authorities under earlier acts. There is nothing in this record to induce a contrary conclusion.

The reference in the foregoing extract is to the decision of the circuit court of appeals in the previous case of United States *v.* Crucible Steel Company (137 Fed. Rep., 384; T. D. 26157).

The Government having recently acquiesced (T. D. 28163), the ruling cited has become final; and in accordance with it, and on the testimony and the samples admitted in evidence in the cases now before us, we sustain the protests in the schedule attached to this opinion and reverse the decision of the collector assessing an additional 1 cent per pound duty under paragraph 141. Reliquidation will follow accordingly.

(T. D. 28233.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15664.—Ammoniacal Glycirrhizin.—Protest 232112 of F. W. Braun Company against the assessment of duty by the collector of customs at the port of Los Angeles. Before Board 1, June 5, 1907. Opinion by Lunt, G. A.

So-called ammoniacal glycirrhizin, classified as saccharin under paragraph 211, tariff act of 1897, was held, as claimed by the importers, to be dutiable as a coal-tar preparation under paragraph 15. Abstract 10953 (T. D. 27309) followed.

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No. 15665.—Coral Articles.—Protest 248093 of Rud C. Hahn & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6482 (T. D. 27726), relating to coral articles.

No. 15666.—Strung Beads.—Protests 29867*h*, etc., of Veit, Son & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of Frankenberg Company *v.* United States (T. D. 28189), relating to strung beads.

No. 15667.—Beads—Ornaments.—Protest 50697*f* of H. Wolff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by Sharretts, G. A.

The protests related to strung beads and to belt buckles, which the Board held dutiable as manufactures of the component of chief value, as claimed in the protest.

No. 15668.—Metal Belts.—Protest 204099 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by Sharretts, G. A.

A portion of the goods, consisting of belts, was held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers. G. A. 6374 (T. D. 27382) followed.

No. 15669.—Hat Pins.—Protest 248283 of Libbey & Ryker against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by Sharretts, G. A.

The protest related to hat pins, some of which were held to have been properly classified as jewelry under paragraph 434, tariff act of 1897, and others were held dutiable as manufactures of the component of chief value, as claimed by the importers. G. A. 6139 (T. D. 26679) followed.

No. 15670.—Leather Heel Lifts.—Protest 244975 of A. J. Bolton Company against the assessment of duty by the collector of customs at the port of Rochester. Before Board 1, June 5, 1907. Opinion by McClelland, G. A.

The protest related to pieces of leather cut to size, ready for use in making heels for shoes. The importers objected to the classification of these articles as manufactures of leather under paragraph 450, tariff act of 1897. Assessment affirmed.

No. 15671.—Nickel Plates.—Protest 221969 of Herman Boker & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907.

The merchandise was classified under paragraph 197, tariff act of 1897, as articles of nickel wholly or partly manufactured, and was claimed to be dutiable under paragraph 185. Assessment affirmed.

Fischer, *General Appraiser:* The merchandise consists of rectangular plates of nickel, 36 inches long, 8 inches wide, and one-half inch thick. * * *

Paragraph 185 is restricted by its terms to nickel in pigs, ingots, bars, and sheets. At the hearing the only contention pressed was that the articles are bars or sheets, but the testimony offered wholly fails to support such contention. The only witness was

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the importer himself, who claimed that the articles would more often be called bars than sheets, but yet admitted that a sheet of this thickness (one-half inch) would be properly designated a plate rather than either a bar or a sheet. In order to bring his goods within the purview of paragraph 185 it was necessary for the importer to show affirmatively that they are bars or sheets. This, in our opinion, he has failed to do.

No. 15672.—Copying Paper.—Protest 247792 of Hy. Bainbridge & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinion by Fischer, G. A.

The question was as to whether copying paper dutiable under paragraph 397, tariff act of 1897, weighed less than 6 ounces per ream, as classified, or more, as claimed by the importers. Protest sustained.

No. 15673.—Artificial Silk Ribbons.—Protest 221872 of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 5, 1907. Opinion by Fischer, G. A.

As claimed by the importers, artificial silk ribbons were held dutiable as manufactures of silk by similitude under paragraph 391, tariff act of 1897. Note G. A. 5802 (T. D. 25632).

No. 15674.—Featherstitch Braids.—Protests 43444*f*, etc., of D. Hirschberg & Bro. *et al.* and protests 225702, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinions by Howell, G. A.

Protests overruled on the authority of Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456), relating to featherstitch braids.

No. 15675.—Protests Insufficient.—Protests 171527, etc., of P. K. Wilson & Son *et al.* and protest 244246 of Marcel Schmitt against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinions by De Vries, G. A.

Protests overruled because insufficient. G. A. 6588 (T. D. 28159) followed.

No. 15676.—Jute Bagging.—Protests 223111, etc., of E. R. Biddle *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinion by De Vries, G. A.

As claimed by the importers, the merchandise was held dutiable as jute bagging for cotton under paragraph 344, tariff act of 1897.

No. 15677.—Silk Embroidered Articles.—Protest 242400 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinion by De Vries, G. A.

Linen articles embroidered with silk were held to have been properly classified under paragraph 390, tariff act of 1897, relating to silk embroideries.

No. 15678.—Wafers.—Protests 232269, etc., of O'Brien & Co. *et al.* against the assessment of duty by the collector of customs at the port of Detroit. Before Board 3, June 5, 1907. Opinion by Waite, G. A.

Protests sustained in accordance with United States *v.* Meadows (T. D. 28004), relating to wafers.

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No. 15679.—SUGAR TEST.—Protests 212165, etc., of Franklin Sugar Refining Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, June 5, 1907. Opinion by Somerville, G. A.

The importers alleged that there were errors in the ascertainment of the polariscopic tests by the Government officers on importations of sugar. Protests overruled, the Board finding the customs regulations to have been substantially followed in the making of tests.

No. 15680.—GUTTA-PERCHA—WASTE.—Protest 230524 of A. H. Ringk & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 5, 1907. Opinion by Hay, G. A.

The Board held trimmings and cuttings resulting from the manufacture of gutta-percha articles, which were fit only for remanufacture, to have been properly classified as waste under paragraph 468, tariff act of 1897. Abstract 1672 (T. D. 25337) followed, relating to waste.

No. 15681.—ANIMAL HAIR.—Protest 243410 of Wells, Fargo & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 5, 1907.

The protest related to material invoiced as animal hair and returned by the appraiser as imitation hair partially manufactured. The importers contended that it had been improperly classified under section 6, tariff act of 1897, relating to unenumerated manufactured articles, and should have been admitted free of duty under paragraph 571, relating to hair of animals. Protest sustained.

HAY, *General Appraiser:* The importer testified that the merchandise came originally from China, and is hair from the tail of a yak, which is sent to London, where it is washed, cleaned, and drawn; and this was corroborated by the testimony of another witness. The chemist connected with the appraiser's office at the port of New York, who examined a sample of the hair and reported that in his opinion "the sample is composed of artificial filaments made from proteid matter, the latter having the characteristics of casein," admitted upon the witness stand that it is impossible to tell from chemical analysis whether it is animal hair or a manufactured product.

Paragraph 571, under which free entry is claimed for the goods under consideration, reads as follows:

571. Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this Act; and human hair, raw, uncleaned and not drawn.

This paragraph is intended to comprehend within its scope the hair of all animals whether cleaned or uncleaned, drawn or undrawn, if the same is unmanufactured. We think the testimony fairly shows that the commodity in question is the hair of an animal, cleaned but unmanufactured.

No. 15682.—PETROLEUM PRODUCTS.—Protests 246682, etc., of Smith & Nichols against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 5, 1907. Opinion by Hay, G. A.

Protests overruled on the authority of United States *v.* Downing (T. D. 27025), relating to petroleum products.

No. 15683.—PROTEST INSUFFICIENT.—Protest 247473 of Franz Schwartz against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 5, 1907. Opinion by Hay, G. A.

It appeared that the merchandise had been improperly classified. As the importer failed to make the correct contention, the protest was overruled.

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No. 15684.—SMOKERS' ARTICLES.—Protest 243628 of Ralph Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 5, 1907. Opinion by Hay, G. A.

The importers objected to the classification of the goods as smokers' articles under paragraph 459, tariff act of 1897. Assessment affirmed. Note Abstract 1655 (T. D. 25337).

No. 15685.—SMOKERS' ARTICLES.—Protests 242532, etc., of Apollinaris Agency Company *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same as No. 15684 (*supra*).

No. 15686.—PROTESTS ABANDONED.—Protests 229292, etc., of L. Metzger & Co. *et al.* and protests 242358, etc., of Austin Baldwin & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 5, 1907.

Protests abandoned.

No. 15687.—PROTEST ABANDONED.—Protest 244961 of I. McNiven against the assessment of duty by the collector of customs at the port of Niagara Falls. Before Board 2. Opinion by Fischer, G. A.

Same as No. 15686 (*supra*).

No. 15688.—PROTESTS ABANDONED.—Protests 244345, etc., of Knauth, Nachod & Kühne *et al.* Before Board 1. Opinion by McClelland, G. A.

Same as No. 15686 (*supra*).

No. 15689.—PROTESTS UNSUPPORTED.—Protests 238526, etc., of L. Gandolfi & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 5, 1907. Opinion by McClelland, G. A.

Protests overruled for want of merit.

No. 15690.—PROTEST UNSUPPORTED.—Protest 248208 of C. E. Burleson against the assessment of duty by the collector of customs at the port of Burlington.

Same as No. 15689 (*supra*).

No. 15691.—PROTESTS UNSUPPORTED.—Protest 244249 of Schofield & Walter and protest 249164 of Mills & Gibb against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 5, 1907. Opinions by De Vries, G. A.

Protest overruled for want of merit.

No. 15692.—PROTESTS UNSUPPORTED.—Protests 246789, etc., of Bauman, Ludewig & Co. Opinion by Howell, G. A.

Same as No. 15691 (*supra*).

No. 15693.—PROTEST UNSUPPORTED.—Protest 232155 of R. F. Downing & Co. Before Board 3. Opinion by Hay, G. A.

Same as No. 15691 (*supra*).

No. 15694.—PROTEST UNSUPPORTED.—Protest 223316 of Roessler & Hasslacher Chemical Company against the assessment of duty by the collector of customs at the port of Newport News. Before Board 3. Opinion by Hay, G. A.

Same as No. 15691 (*supra*).

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TREASURY DEPARTMENT, *June 12, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 28234.)

Prepared fish sounds.

UNITED STATES *v.* BESTARD.

U. S. District Court, District of Porto Rico. May —, 1907. No. 398 (suit 1851).

PREPARED FISH SOUNDS.

Fish sounds invoiced at from 25 to 35 cents per pound, that have been split, cleaned, dried, and otherwise treated, and are used entirely for food, are subject to classification under paragraph 23, tariff act of 1897, as "prepared * * * fish sounds," and not under paragraph 496 relating to "fish sounds, crude, dried or salted for preservation only, and unmanufactured."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

In the decision below, Abstract 11694 (T. D. 27409), which is quoted in full in the opinion of the court (*infra*), the Board sustained the protest of P. Bestard & Co. against the assessment of duty by the collector of customs at the port of San Juan.

J. R. F. Savage, United States attorney, for the United States.

RODEY, *District Judge:* On January 28, 1906, P. Bestard & Co., of Ponce, P. R., imported certain fish sounds, and invoiced them under paragraph 496 of the tariff act of July 24, 1897; but the collector classified them under section 23 of that act and charged a duty of 15 cents a pound and 20 per cent ad valorem against them. The importers filed a protest to such classification and took an appeal to the Board of General Appraisers at New York, which sustained their protest, and from which action the collector applied for and obtained an order of this court to review the same. Due return was made to the order, and the matter is now before us for final hearing. The importer has paid no attention to the case in this court, and so the case proceeded *ex parte.* A hearing was had in open court, the evidence of the witnesses taken, and the samples of the merchandise introduced as exhibits were examined by the court. Just before this decision, we caused the stenographer to read the notes of the testimony in full; and from it we state the following facts:

There is a very considerable quantity of these fish sounds imported into Porto Rico annually. The sounds are washed perfectly clean, and probably pressed and dried. That is the evidence; and it is probably true, judging from the samples introduced. A sample said to be the crude article, which a deputy collector of customs testified he secured for the purposes of this case from New York, was also introduced in evidence. It is twice or three times as thick and is not at all scraped, split, washed, cleaned, or dried, as the sample of the sounds in question is. The evidence also shows that these sounds imported in Porto Rico are a superior article and are entirely used for food, the inhabitants making some sort of a dish with raisins and sweet peppers out of them. They are worth from 25 to 35 cents a pound as invoiced, and retail from 50 to 75 cents a pound. None of the crude article is ever seen on the island. It is not imported here; and no sounds are imported for manufacturing purposes at all, such as the crude article is used for when imported at New York, Boston, and other places.

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We have gone through quite a number of Treasury decisions on this subject, furnished us by the collector of customs, and find that the decisions heretofore have varied very much; but all were based upon an article used in manufacture, and none of the decisions save the recent ones are given in the light of an article of this kind of a character that can be used for food. The United States attorney furnishes us with a brief and argument in the case, which we have examined, together with its references, with considerable care; and while it makes this opinion longer than it otherwise might be, still it is a clear exposition of the status of the conflicting decisions, and we subjoin it as follows:

The fish sounds in question were classified by the collector under paragraph 23 of the customs or tariff act of July 24, 1897 (30 Stat., 151), which provides:

"23. Gelatin, glue, isinglass or fish glue, and prepared fish bladders or *fish sounds*, valued at not above ten cents per pound, two and one-half cents per pound; valued at above ten cents per pound and not above thirty five cents per pound, twenty-five per centum ad valorem: valued above thirty-five cents per pound, fifteen cents per pound and twenty per centum ad valorem."

The importer protested, claiming that the correct classification should have been under paragraph 496 of the same act, which provides:

"496. Bladders, and all integuments and intestines of animals and fish sounds, crude, dried or salted for preservation only, and unmanufactured, not specially provided for in this Act."

Paragraph 496 just quoted is part of section 2 of the act above named, which provides:

"SEC. 2. That on and after the passage of this Act, unless otherwise specially provided for in this Act, the following articles when imported shall be exempt from duty."

The fish sounds imported into Porto Rico are used, as testified to by the importers called by the Government on this hearing, exclusively for food. This fact must be borne in mind when reading the Treasury decisions which interpret the foregoing paragraphs of the tariff act, since, prior to the decisions based on importations of this article into Porto Rico, the Board of General Appraisers dealt only with fish sounds that were either absolutely crude, and which would be used in the United States in the manufacture of isinglass, or prepared and more or less approaching the manufactured article.

The first case arising under an importation of these edible fish sounds into Porto Rico is protest 138100 of Cerecedo Hermanos of San Juan (a member of which firm was a witness for the Government at this hearing). The Board held, Abstract 5487 (T. D. 26218; 9 Treas. Dec., 556):

"The merchandise consisted of fish sounds carefully cleaned, pressed, and dried. On the authority of G. A. 5094 (T. D. 23562) they were held to be dutiable under paragraph 23, tariff act of 1897, and not under paragraph 258, as classified. As the importers did not make the correct contention, the protest was overruled."

In explanation of the foregoing decision it should be stated that the collector classified the importation under paragraph 258 of the tariff act as "fish in packages, not specially provided for in this Act," whereas the importer claimed the correct classification to be under paragraph 496, as is the claim in the case at bar. This case was decided in March, 1905.

The next case, which was decided by the Board in April, 1905, arose under an importation of fish sounds made by F. Font & Hermano (a member of which firm was also a witness on behalf of the Government at this hearing), and upon the protest made by this firm against the classification made by the collector, the Board held:

"Certain fish sounds, classified under paragraph 258, tariff act of 1897, were claimed to be free of duty under paragraph 496 as crude fish sounds. The Board held that they should have been classified under paragraph 23, relating to prepared fish sounds. This claim not having been made, the protests are overruled." Abstract 6045 (T. D. 26289; 9 Treas. Dec., 700).

The next case (which is the first in which the Board appears to have taken notice that fish sounds might be edible) arose under an importation made by S. Y. Tank & Co. at the port of Boston. The Board on August 24, 1905, held:

"The appraiser reports that the merchandise, which is invoiced as fish maw, consists of fish sounds. *Being edible* and contained in packages of less than one-half barrel, duty was assessed on the same at the rate of 30 per cent ad valorem under paragraph 258. The importers alternatively claim classification and duty at 2½ cents per pound, or 25 per cent ad valorem under paragraph 23 of tariff act of 1897, and in our opinion this claim is well founded. It appears from the appraiser's report, and we find as a fact, that the merchandise is nothing more than prepared fish sounds, and

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although edible it would seem to be included within the provisions of paragraph 23, which we regard as more specific than that for 'fish in packages,' contained in paragraph 258.

"The protest is sustained and the collector's decision reversed." (G. A. 6138—T. D. 26678; 10 Treas. Dec., 207.)

The next case arose upon the protest of Wing Sing Lung & Co. against the assessment of duty by the collector of customs at the port of Boston. In this case the Board followed G. A. 6138 (T. D. 26678) above cited, relating to edible fish sounds held to be dutiable under paragraph 23, tariff act of 1897, as claimed by the importers. G. A. 7879 (T. D. 26682; 10 Treas. Dec., 220).

The importation which gave rise to the case now before this court was the next to be passed upon by the Board; and its decision, rendered June 9, 1906, is before this court in the return made herein by the Board, and is as follows:

"LUNT, *General Appraiser:* We find that P. Bestard & Co. imported into the port of San Juan, P. R., January 8, 1906, certain dried fish sounds upon which duty was assessed at 15 cents per pound and 20 per cent ad valorem, and which is claimed to be free under paragraph 496 of said act.

"Upon examination of the sample in the case we find the merchandise to be crude, dried fish sounds and hold it to be free under paragraph 496, as claimed. The protest is sustained."

Thereafter and in February, 1907, the same question was again presented to the Board by Cerecedo Hermanos & Co., of San Juan, P. R., and the Board held the goods to have been properly classified as prepared fish sounds under paragraph 23, tariff act of 1897. Abstract 14517 (T D. 27945; current Treas. Dec.).

In view of the fact that these are the only decisions of the Board of General Appraisers upon the classification of edible fish sounds, and in view, further, of the testimony herein that the samples of the goods imported in this case are the same as the goods imported by both Font & Hermanos and Cerecedo Hermanos & Co., in the cases decided as above by the Board, and that all the Government's witnesses testified that crude fish sounds are unknown to the trade in Porto Rico, a sample of which is in evidence in this matter, it is respectfully submitted that the decision of the Board of General Appraisers herein should be reversed and set aside, and that the relief herein prayed for by petitioner should be granted.

We regard the question involved here as an important matter, in the light of the conflicting rulings of the customs department above referred to in the brief of the United States attorney for Porto Rico; and having examined the samples and heard the evidence, as intimated, we are of opinion that the collector of customs is right in his classification of the goods in question under paragraph 23 of the tariff act, and that the decision of the Board of General Appraisers should be reversed and set aside and the collector of customs sustained, and it is so ordered.

(T. D. 28235.)

Baggage forfeiture.

TWO HUNDRED AND EIGHTEEN AND ONE-HALF CARATS LOOSE EMERALDS *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit, June 5, 1907.

FORFEITURE—BAGGAGE—ARTICLES ON PERSON.

Articles on the person are "baggage" within the meaning of section 2802, Revised Statutes, penalizing the concealment of dutiable articles in the "baggage of any person arriving in the United States;" and a package of precious stones found in the pocket of a passenger which he had failed to declare as required by said section is subject to the penalty there provided.

IN ERROR to the district court of the United States for the southern district of New York.

[Decision in favor of the Government.]

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For decision below, see T. D. 27851, relating to property of Manuel J. Suarez claimant and plaintiff in error herein, which was seized by customs officers at the port of New York.

The case was submitted on briefs, without oral argument.

Louis J. Phillips, for the claimant.

Winfred T. Denison and *Felix T. Frankfurter*, assistant United States attorneys, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here upon writ of error by the claimant of certain loose, unpierced, cut emeralds, to review a judgment of forfeiture for violation of the revenue laws. The judgment was entered October 3, 1906, in the district court, southern district of New York. Upon completion of the testimony a verdict was directed in favor of the Government, both sides having moved for a direction. Subsequently, upon motion for a new trial the district judge filed an opinion which is reported in T. D. 27851. It contains the following statement of facts, which the testimony shows to be accurate:

The claimant, Suarez, a resident of Bogota, in the Republic of Colombia, South America, arrived in New York on October 8, 1906, on the steamship *Oceanic*, from England. His native language was Spanish. He could not speak English, but had some knowledge of the French language, although how much does not clearly appear. On the arrival of the ship the customs officer, who took the declarations of the passengers asked him, in French, if he understood French, and he said that he did. He asked him how many pieces of baggage he had, and he answered three. The examiner testified that he did not seem to clearly understand his questions as to what particular kind of baggage he had. The examiner thereupon drew his pen through the printed form on the declaration for the insertion of the number of trunks, bags, or valises, boxes and other packages, and wrote under the head of "total," at the end, the figure 3. The officer asked him, in French, whether he had anything to declare, whether he had any gifts for other persons, and whether he had anything to sell, to all of which he answered "no." Thereupon Suarez signed his name at the end of the declaration, and swore to it before the officer. Suarez then left the ship and went on the dock. He had as baggage a trunk, a box, and two handbags tied together. He stated to the customs officer on the dock that he was going to Colombia, that he wished to leave with the collector the trunk and the box and that he wished to take with him while in this country the two bags. They were thereupon opened, the contents examined and found to contain nothing dutiable, and were labeled by the customs inspector as being passed. The customs inspector then called another inspector, who spoke Spanish, and directed him to ask Suarez whether he had any precious stones or jewelry upon his person or in his pockets. The inspector did so in Spanish, putting various specific and particular inquiries, and to all of them Suarez answered in the negative. He was then taken on board the steamer and searched and in the pocket of his overcoat was found a package which contained cut emeralds loose and unpierced weighing 218½ carats, which were thereupon seized by the Government, and which are the subject of this suit for confiscation.

LACOMBE, *Circuit Judge:* The information sets forth four alleged causes of forfeiture. It will be necessary only to consider the second one, which charges a violation of the provisions of section 2802, United States Revised Statutes. That section reads as follows:

SEC. 2802. [Penalty for concealing dutiable articles in baggage.] Whenever any article subject to duty is found in the baggage of any person arriving within the United States, which was not, at the time of making entry for such baggage, mentioned to the collector before whom such entry was made, by the person making entry, such article shall be forfeited, and the person in whose baggage it is found shall be liable to a penalty of treble the value of such article.

The contention of the claimant is that articles of merchandise found on the person of a passenger can not be forfeited under this section, which deals with baggage only. The district judge, after some reference to the common-law meaning of the word

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"baggage," held "that such merchandise may be treated as baggage within the sense of the customs laws. A package carried in the pocket does not differ essentially from a package carried in the hand; and in my opinion, if it contains dutiable merchandise, the passenger is bound to declare it in all respects the same as he is bound to declare merchandise contained in his trunk." Certainly, neither the size of a package nor the material of which the covering is made, whether wood, leather, or paper, is material. There is no sound distinction between articles carried in a dress-suit case and articles carried in the small wrist bag which in feminine attire has taken the place of the undiscoverable pocket of a few decades ago. Nor is there any distinction between articles in the pocket of an overcoat worn on the owner's back and articles in the same pocket when the overcoat is rolled up with steamer rugs, a cardigan jacket, and an umbrella, and carried in a shawl strap. Such fine distinctions seem wholly without merit, especially in view of the circumstance that the section does not provide for articles found "in packages of baggage" but "in the baggage of any person arriving," etc. It is unnecessary to discuss the question further in view of former deliverances of this court. In United States *v.* One Pearl Necklace (Dodge; 111 Fed. Rep., 165) we held that section 2802 was applicable to jewelry wrapped up in a handkerchief and carried in a lady's small handbag, and in so doing discussed at great length the various sections relating to the introduction into this country of articles brought from abroad. Referring to this decision in the subsequent case of One Pearl Chain *v.* United States (Dulles; 123 Fed. Rep., 374) we said:

Upon the trial and argument of the case at bar it seems to have been assumed that this court held that a passenger's wearing apparel, articles of adornment, and personal effects ceased to be baggage the moment they were taken out of the trunk and placed on the person of the passenger, and were to be treated, for purposes of entry, etc., as imported merchandise. It is true that the opinion, in contradistinction to "merchandise," spoke of dutiable articles brought by passengers "in their packages of baggage;" but Mrs. Dodge brought her necklace in one of her packages of baggage, in a hand satchel, which, however, she failed to declare. There being no question of wearing the article, and nearly all dutiable articles coming in packages of some sort, the above-quoted phrase was used. To hold that an incoming passenger who, arriving on a cold day, opens one of his packages of baggage and takes out a silk muffler to wrap around his neck, would be subject to have the same forfeited, although he may declare it to the customs officers, because he walked ashore with it without presenting invoice, bill of lading, and consular certificate, and obtaining a special permit, seems to us a most unreasonable proposition. The Dodge case held only that the "merchandise" sections did not apply to passenger's baggage. It did not undertake to define "baggage." No such question arose in the case. Nobody disputed that the necklace in that case was passenger's baggage, to be declared and entered as such.

And on the last appeal in the Dulles case (139 Fed. Rep., 516; T. D. 26419), reference was again made to the same subject as follows:

On the former appeal we held that a passenger's wearing apparel, articles of adornment, and personal effects did not cease to be baggage the moment they were taken out of a trunk and placed on the person. Whether they are hid from view by being stowed in the middle of a trunk, or by being placed under some part of the passenger's clothing, is immaterial.

Claimant relies upon two decisions only. United States *v.* One Pearl Chain (139 Fed. Rep., 517; T. D. 26419) is a minority opinion. In United States *v.* Five Packages of Tapestry (114. Fed. Rep., 496) the facts are not fully reported, but the articles had apparently been smuggled through the custom-house and were not found until after the claimant had ceased to be "a person arriving" and what he brought with him had ceased to be baggage.

The judgment is affirmed.

NOTE.—Judge Townsend heard argument, participated in consultation, and voted to affirm, but did not see the opinion.

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(T. D. 28236.)

Commissions.

ERLANGER *v.* UNITED STATES.

U. S. Circuit Court of Appeals, Second Circuit. June 6, 1907. Suit 3989.

1. APPRAISEMENT—FINALITY—ITEMS INDEPENDENT OF ACTUAL VALUE—ADDITION TO MAKE MARKET VALUE.

The finality to appraisements given by section 13, customs administrative act of 1890, does not extend to the inclusion of items independent of the actual value of the goods; and, where appraising officers have included in their valuation improper items, inquiry as to the legality of their action can not be cut off by their report that they added the contested items "to make market value," and in a case where a so-called converters' commission was included in the appraised value, it was proper to admit evidence as to the nature of the item.

2. SAME—CONVERTERS' COMMISSIONS—DUTIABLE ELEMENTS.

An invoice item of "commission" was shown to represent a charge by so-called converters for services to the importers in connection with receiving the goods from the manufacturer and preparing them for shipment to the United States, including dyeing and finishing. *Held* that, so far as the item was composed of the charge for dyeing and finishing, it was a part of the dutiable value, under section 19, customs administrative act of 1890, as a cost entering into the production of the merchandise imported, and that, in the absence of satisfactory evidence as to the character of the other elements of the item, it should be presumed that they were also properly included in the appraised value.

APPEAL from the circuit court of the United States for the southern district of New York.

[Decision in favor of the Government.]

For decision below see 152 Federal Reporter, 576 (T. D. 27874), affirming a decision of the Board of United States General Appraisers, Abstract 5940 (T. D. 26268), which had affirmed the assessment of duty by the collector of customs at the port of New York on importations by N. Erlanger, Blumgart & Co. The opinion of the Board, so far as pertinent to this appeal, reads as follows:

WAITE, *General Appraiser:* The protests allege that nondutiable commissions were erroneously included in the dutiable value of the merchandise. Three distinct states of fact respecting the action of importers and the customs officers, with relation to these alleged commissions, are disclosed by the record. They are as follows: * * *

3. Instances where amounts equaling items described in the invoices as commissions were deducted by the importers upon entry from the price stated in the invoice for the merchandise, but were added to such value by the local appraiser to make market value. An appeal being taken upon these invoices to a single General Appraiser, he made a finding as follows: "To invoice price packed add [here amount is stated] amount specified as commission, to make market value." The action of the General Appraiser was approved by a Board of three General Appraisers, to which an appeal was subsequently taken. * * *

Stated more specifically, the contentions and allegations of the protests, so far as material, appear to be as follows: * * * 2. That in the circumstances described * * * the appraising officers improperly advanced the value by disallowing the deduction of commissions, and that where they were included upon entry the collector compelled the importers to include them by duress to avoid the imposition of additional or penal duties. * * *

It is understood that the principal controversy in these cases arises over the invoices referred to in finding 3. It is our opinion, however, that in view of the action of the appraising officers with respect to these invoices, the question as to whether the items

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of so-called commissions were, as a matter of fact, nondutiable commissions, and the parties to whom they purport to be paid commissionaires is a matter of no consequence, so far as the power of this Board sitting to review the collector's liquidation is concerned. All that has been added was added *to make market value*, and by the proper appraising officers who were acting clearly within their right as set forth in sections 10, 13, and 19 of the customs administrative act of June 10, 1890 (26 Stat., 131). United States *v.* Herrman (91 Fed. Rep., 116); United States *v.* Kenworthy (68 Fed. Rep., 904); Wanamaker *v.* Cooper (69 Fed. Rep., 329); *In re* Rothfeld, G. A. 3291 (T. D. 16646). The value returned by the appraising officers as the market value of imported merchandise, including every element which is expressly included to make market value is, under well-settled principles, final and conclusive upon all persons interested, in the absence of fraud or illegality in the proceedings. Passavant *v.* United States (148 U. S., 214); Muser *v.* Magone (155 U. S., 240); United States *v.* Passavant (169 U. S., 16).

The importers have not suggested fraud, and the only illegality they allege or offered to prove at the hearing was that the items added represented nondutiable commissions paid to a commissionaire, and that they were added as commissions by the appraising officers. Testimony on this point was excluded, however, in view of the fact that the reports of the appraising officers expressly stated the items to have been added to make market value. Abundant authority for such action is found in the authorities cited above. The circuit court of appeals in the Kenworthy case (*supra*) held similar evidence to have been erroneously admitted in the court below, observing (p. 908):

"It follows, therefore, that it was error to allow the witness Culver to testify that the disputed charge was paid as a commission, and did not enter into the price or value of the wool, for that was a question of fact which had been finally determined by the authorized officials and was not retriable by the jury. We are of opinion that the court should have given peremptory instructions in favor of the Government."

* * * The protests are overruled with an affirmance of the collector's decision.

Curie, Smith & Maxwell (*W. Wickham Smith*, of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

Before LACOMBE, TOWNSEND, and COXE, Circuit Judges.

This cause comes here upon appeal from a decision of the circuit court, southern district of New York, affirming a decision of the Board of General Appraisers which affirmed the action of the collector of the port of New York.

LACOMBE, *Circuit Judge:* The appellants imported certain worsteds and cottons, their invoices containing a statement of the price of the goods in sterling and an addition of 2½ per cent commission. The commission was deducted on the entry as nondutiable. The appraiser added it again to the valuation to make market value. The General Appraisers on reappraisement proceedings sustain this action. The importers protested against the liquidation. When the protests were transmitted to the Board of General Appraisers, the importers offered evidence in support of their protests. Objection was made to any inquiry as to the 2½ per cent commission on the ground that the goods in question had been appraised and reappraised, and that the question of value could not be attacked unless fraud were shown. The objection was sustained, and in the language of the Board—

Testimony on this point was excluded in view of the fact that the reports of the appraising officers expressly stated the items to have been added to make market value.

Upon appeal to the circuit court it was held (152 Fed. Rep., 576; T. D. 27874) error to exclude the testimony and that, although the valuation as fixed by the appraisers is final, it may be attacked where items have been included independent of the actual value. The decision of the circuit court on this point is abundantly sustained by the authorities cited in Judge Hazel's opinion. See, also, decision of this court in United States *v.* Godillot & Co. (139 Fed. Rep., 1; T. D. 26272). The appraisers can not include in their valuation some improper item, such as ocean freights from the foreign country to the United States, and cut off all inquiry as to their action by merely inscribing on the entry a statement that they added the item "to make market value."

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The importer contends that this 2½ per cent is merely a commission paid to his agent for services in procuring, forwarding, and caring for the goods, and is quite independent of the wholesale price of the goods at the market where they were bought. Conceding that the commission represents only the services above specified, the question would remain whether, under the conditions of trading in the foreign market, it was "an arbitrary item which really represented a part of the market price of the goods to the ordinary purchaser in the foreign market," as was the case with the importations considered in United States *v.* Herrman (91 Fed. Rep., 116). We do not find it necessary to decide that question upon this record, which is perhaps fortunate; because, by reason of the fact that the Government put in no testimony, the conditions of buying and selling these goods are not as fully set forth as they were in the Herrman case.

From the record it appears that the person to whom the 2½ per cent is paid is known as a "converter." He procures from the manufacturers of the goods samples of such as they have on hand or are prepared to make. These samples, personally or by an agent here, he exhibits to the importer, who makes his selection and gives an order. Sometimes the importer goes direct to the manufacturer, makes selection, and gives an order, and thereupon furnishes a sample with details to the converter, who receives the goods from the manufacturer. The services rendered by the converter after order given appear to be as follows: (1) He receives the goods from the manufacturer, unfolds them, and carefully examines them to see if they conform to the order and sample, to see that the importer is "getting the right goods;" (2) he pays the manufacturer and sends the bill, with his commission added, to the importer, who pays him; (3) the goods are delivered by the manufacturer folded, but the American market wants them rolled; therefore the converter has them unfolded and rolled; (4) he has them packed in cases or canvas and attends to the shipping; (5) the testimony indicates that the manufacturer produces the goods only in the grey; it is the converter who "has them dyed and finished." The invoices indicate that a large part of these shipments were dyed.

In addition to the 2½ per cent the invoices contain other items of charge variously stated as follows: "Making up and packing," "packing, labor, etc.," "making up and cases," "making up in plaits," "boxes," "packing in cases," "packing in canvas," "cost of rolling, boards, paper, American shook cases," "lining and nails." These items of charge are all added to the valuation, which the statute prescribes shall include "the value of all cartons, cases, crates, boxes, sacks, and coverings of any kind, and all other costs, charges and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States." The record does not disclose how comprehensive are these above-quoted items of charge. Undoubtedly they cover the cost of the material used and the labor employed in rolling and packing, but they may or may not include the remuneration of the individual who procured such work to be done and oversaw the doing of it. In other words, so much of the converter's individual services as are enumerated under Nos. 3 and 4 (*supra*) may be included in these items and it may not. Upon the familiar principle that it must be presumed that public officers act according to law, we must assume that such services are not included. Certainly so much of the converter's services as are enumerated under No. 5 (*supra*) should be included in the market value; they enter into the production of the completed article which is purchased abroad for importation here. There is nothing to show that these services are included in any item of charge; apparently they are included in the 2½ per cent.

Upon this record we are not satisfied that the appraisement should be reduced by the 2½ per cent which is the subject of protest, and therefore the decision of the circuit court is affirmed.

NOTE.—Judge Townsend heard argument, participated in consultation, and voted to affirm, but did not see the opinion.

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(T. D. 28237.)

Importations from United States into Philippines.

UNITED STATES *v.* HEINSZEN.

United States Supreme Court. May 27, 1907. No. 580.

1. IMPORTATIONS INTO PHILIPPINES FROM UNITED STATES—CONGRESSIONAL RATIFICATION OF EXACTION OF DUTIES.

Congress had the power to ratify the collection of duties imposed by the Philippine government on importations into the Philippines subsequent to the acquisition of those islands by the United States; and under the act of June 30, 1906 (34 Stat., 636), ratifying the collection of all duties prior to March 8, 1902, duties are not recoverable that were paid on importations from the United States.

2. RETROACTIVE LEGISLATION—RATIFICATION OF DUTIES.

Where an agent of the United States has without precedent authority exercised in the name of the United States a power which Congress has the right to bestow, Congress may ratify and confirm such unauthorized act and thus retroactively give it validity when rights of other parties have not intervened.

3. DELEGATION OF LEGISLATIVE AUTHORITY—PHILIPPINES.

In dealing with the Philippines Congress has power to delegate legislative authority to such agencies as it may select.

4. RETROACTIVE LEGISLATION—TEST OF VALIDITY.

In testing the validity of an act of Congress ratifying the imposition of duties previously collected, an important consideration in favor of such validity is that, although the duties were illegally exacted, the illegality was not the result of an inherent want of power to have authorized the imposition, but simply arose from the failure to delegate to the collecting officials the authority essential to give immediate validity to their enforcement of the payment of duties.

5. SAME—DUE PROCESS OF LAW.

The act of June 30, 1906 (34 Stat., 636), ratifying the previous imposition of duties on importations into the Philippines, does not violate the fifth amendment to the Constitution by requiring the taking of property without due process of law.

6. SAME—SAME—COMMENCEMENT OF SUIT.

The fact of the commencement of a suit against the Government for duties illegally exacted does not affect the power of Congress to ratify the exactions by causing the statute to become repugnant to the fifth amendment to the Constitution prohibiting the taking of property without due process of law.

APPEAL from the United States Court of Claims.

[Decision in favor of the Government.]

This appeal is prosecuted against Conrad Heinszen and Gustav Brockmann, trading as partners under the firm name of C. Heinszen & Co., and relates to a decision of the United States Court of Claims, in Heinszen *v.* United States, No. 22914, rendered January 7, 1907. The opinion of the Court of Claims reads as follows:

"BARNEY, *Judge:* The amended petition in this case, the original of which was filed July 1, 1902, alleges that the claimant shipped merchandise from ports in the United States into the Philippine Islands between April 11, 1899, and November 15, 1901, upon which they paid duties under the customs tariff and regulations promulgated by the Executive order of July 12, 1898, and subsequent amendments. It is alleged that between November 10, 1898, and November 15, 1901, certain army officers were designated under orders of the President to act, and did act, as collectors of customs at the ports of the Philippine Islands, and that, upon the arrival at the port of Manila of articles brought by claimant from the United States, the said military offices, acting as such collectors of customs and pursuant to and in accordance with said orders and regulations, took possession of such merchandise and placed it under military guard, in the

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manner prescribed by said regulations, proceeded to assess and levy duties thereon at the rate therein established, and refused to deliver possession of the same to the claimants until the payment in cash of such duties, and threatened, in the event of the default in the payment of such duties, to seize such merchandise with the military force at their command and to sell the same for payment of such duties; that the claimants were compelled to and did pay to such military officers, acting as such collector of customs, the amount of duties so assessed by him, but under duress and in order to obtain possession of their said merchandise and in order to carry on their said business: and upon such payment said merchandise was released to them.

"This action is brought to recover from the defendants the amount of the duties so paid by the claimant.

"To this petition the defendants demur, and the questions raised by the demurrer are: 1. Is the Government a proper party defendant? 2. Do the allegations of the petition negative a voluntary payment? 3. Did the validating act of June 30, 1906, legalize the collection of the duties of which the claimant complains? The demurrer of the defendants admits the truth of all the allegations contained in the petition properly pleaded, so that we must look to that pleading alone to determine these questions.

"1. As to the first contention of the defendants we shall devote but little attention from the fact that when the Warner, Barnes & Co. case was before this court the same point was raised, and while the petition was dismissed by this court on other grounds, the case went to the Supreme Court and was there considered twice (*Lincoln et al. v.* United States, 197 U. S., 419; T. D. 26393; 202 U. S., 484; T. D 27413); and the decision of this court was reversed. While it was urged upon the argument of the demurrer in this case that this point was not considered in the Supreme Court, it hardly seems possible that so important a question should have entirely escaped the attention of the able counsel, as well as the court, in that case.

"It appears from the allegations in the petition, and is also a historical fact, that the order of July 12, 1898, was issued by the President as a war measure during the Spanish war, and that the tax thereunder was collected by the military authorities of the United States. It is also alleged that 'the several military officers of the United States, acting as collectors of customs as aforesaid, paid over the several amounts of duties so collected by them from your petitioners as aforesaid to the United States, and the whole amount of such duties is now held by the United States.' Section 4 of the act of March 8, 1902, provided, 'that the duties and taxes collected in the Philippine Archipelago * * * shall be held as a separate fund and paid into the treasury of the Philippine Islands to be used and expended for the government and benefit of said islands;' and, as was held by Judge Wright in his opinion in the Warner, Barnes & Co. case (40 Ct. Cls., 1, 31, 32; T. D. 25314), 'such tariffs were collected solely as a military contribution. * * * The money was not covered into the Treasury of the United States, but was applied by the military government toward its own expense in prosecuting the war, etc.'

"In short, this tax was collected by the military authorities of the United States and not by the authorities of the Philippine Islands, and if this collection was illegal we have no doubt the United States are liable for its return, unless they have some good defense thereto.

"2. Upon the question of voluntary payment raised by the demurrer of the defendants we might repeat what has already been said upon the first point raised, viz, that a case involving the same question has been before this court before, and twice in the Supreme Court; and while it was not mentioned in the opinions, it is hardly possible that it was entirely unnoticed by either court, or eminent counsel who were engaged on either side.

"We deem it, therefore, unnecessary to enter into an extended discussion of the question raised, but will only refer to the case of Swift *v.* United States (111 U. S., 22), which appears to us to settle it. The opinion in that case, rendered by Justice

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Matthews, fully considers the question of voluntary payment under similar circumstances, referring to numerous authorities which we think are clearly applicable to the case at bar, and is ample authority for holding that the allegations in the petition make the payment of the tax in question involuntary.

"This case was cited approvingly in United States *v.* Edmonston (181 U. S., 500), where it is said: 'As indicated in the opinion in Swift Company *v.* United States, there are cases in which the formality of a protest or objection is unnecessary; some things may be taken as equivalent thereto or as sufficient in lieu thereof.' (*Ib.*, 514.)

"See Cooley on Taxation (3d ed., 1505–1506).

"Our attention has been called to certain regulations of the revenue department prescribing the manner and form of making protests to assessments of import duties. It is only necessary to say that the tax or imposition complained of in this case was an exaction upon goods which were not imported at all. Dooley *v.* United States (182 U. S., 222, 225). It can hardly be successfully maintained that the Government can impose an illegal tax and at the same time prescribe the only manner in which objections can be made to its payment.

"3. We now come to the most important and difficult question in the case, which is that raised by the contention that the act of June 30, 1906, validated all of the taxes collected by virtue of the order of July 12, 1898, and, of course, the taxes in question paid by the claimant. It is perhaps unnecessary to say in this connection that the decision of the Supreme Court in the insular cases makes the requirement of all duties after April 11, 1899, the date of the ratification of the Spanish treaty, until such duties were provided for by the Congress contrary to law; hence the question whether the act of June 30, 1906, was curative of this illegality. The deficiency appropriation act of June 30, 1906, contained the following provision:

"That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March 8, 1902, at all ports and places in said islands upon all goods, wares and merchandise imported into said islands from the United States or from foreign countries, or exported from said islands are hereby legalized and ratified and the collection of all such duties prior to March 8, 1902, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed. (34 Stat. L., 636.)

"It must be admitted that this provision is unmistakable in its language and broad enough to completely cover the case if it is possible for Congress so to do.

"We fully recognize the rule that a court should never declare a legislative act unconstitutional and thereby refuse to obey its mandate, except upon the most careful consideration, and then only where there is hardly room for reasonable doubt. In the present case, however, we do not regard the question as an open one, as the Supreme Court, before the passage of the act in question, declared such a law to be unconstitutional as applicable to the case at bar, and in so doing used the following language in commenting upon the act of March 24, 1900 (ch., 339; 31 Stat. L., 151), and which was invoked by the counsel for the United States as having curative force under like circumstances:

"As the action in this case was brought March 13, 1900, eleven days before the act was passed, the right to recover the money sued for could not be taken away by a subsequent act of Congress. Plaintiffs sue in assumpsit for money which the collector has in his hands, justly and equitably belonging to them. To say that Congress could by a subsequent act deprive them of the right to prosecute this action would be beyond its power. In any event it should not be interpreted so as to make it retroactive. De Lima *v.* Bidwell (182 U. S., 199–200).

"In the case of Dooley *v.* United States (*supra*) the court held that the right to collect duties on goods brought from the United States into the Philippine Islands under the President's order of July 12, 1898, ceased on the exchange of ratifications of the treaty.

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"Later, in the case of Lincoln *v.* United States and Warner, Barnes & Co. *v.* United States (202 U. S., 484; T. D. 27413), the court, in speaking of the effect of the ratification act of July 1, 1902, says:

"The statute does not ratify all actions or all collections of taxes, as it easily might have done, but only actions in accordance with the order. If the order, properly construed, did not purport to apply to vessels unless they were either enemy or foreign, then when a vessel ceased to be foreign the order did not apply, and a tax upon such a vessel, not being in accordance with the order, is not ratified by the act. This construction is favored by the consideration that the suits had been begun when the act of July 1, 1902, was passed, and that, even if Congress could deprive plaintiffs of their vested rights in process of being asserted (Hamilton *v.* Dillin, 21 Wall., 73), still it is not to be presumed to do so on language which, literally taken, has a narrower sense.

"Here we have a decision to the effect that Congress, in terms at least, could *easily have ratified* the collection of the duties. But inasmuch as no time is there mentioned when such act, to be effective, could have been passed, and the ruling in the case of De Lima *v.* Bidwell is cited approvingly, we again turn to the De Lima case where we find in the paragraph quoted therefrom two things established (1) that 'the right to recover the money sued for could not be taken away by a subsequent act of Congress.' Nor could such act deprive a claimant of his right to prosecute a pending suit. (2) That such act should not in any event be interpreted so as to make it retroactive.

"Such being the decision of the Supreme Court, we do not regard the question of the constitutionality of the ratifying act of June 30, 1906, an open one, however much we might otherwise incline to apply the act in the present case.

"Although we incline to the belief that we are bound by the decisions of the Supreme Court referred to, still, in view of the importance of the case as well as at our embarrassment at the seeming conflict between the legislative and judicial departments of the Government, we think it not our place to refer to the ruling in other cases respecting what proceedings or acts may be the subject of ratification.

"There are few questions which have been more frequently before courts for determination than those of retrospective and curative statutes relating to taxation; and for that reason such a variety of facts have been presented in these cases that the majority of them gave but little light in the decision of the present case.

"Most of these cases present the question of the curative force of statutes applicable to the failure to comply with provisions of law relating to the assessment and collection of the tax, but where the tax itself was not fundamentally illegal; others, however, belong to an entirely different class and involve the right of the legislative department to cure an entire want of authority of the tax executive to act at all—in other words, by retrospection to create a tax which was not a tax before. While some of the first class mentioned come very close to the border line of those cases involving the right to collect any tax at all—i. e., the very groundwork of the taxation—we believe a clear distinction exists between the two classes which has generally been recognized by the courts, and which is fundamental in their decisions.

"It is proper also to remark that there is a lack of harmony in some of these cases, and to such an extent as to make it impossible to reconcile many of them; yet we think it can safely be said that the distinction above referred to has been recognized in all of them whenever such distinction was necessary to the decision of the case. The following are a few of the many cases of the first class—i. e., where the statute seeks only to cure some irregularities in the levying and collection of the tax, but where authority for the tax itself existed; or that it was justifiable either in the way of unsatisfied judgments against the municipality, public improvements made according to law, or the like: Iowa Railway Company *v.* Loper (39 Iowa, 112); Nottage *v.* Portland (35 Oreg., 539); Butler *v.* Toledo (5 Ohio St., 225); Dean *v.* Borschenius (30 Wis., 236). See cases cited on page 514, Cooley on Taxation, and in Black on Constitutional Prohibition (sec. 215).

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"There is no conflict of the authorities in this class of cases, and the law is well settled that the legislature by a retrospective statute can cure such irregularities.

"Before citing and commenting upon some of the cases where legislatures by retrospective statutes have attempted to cure the levying and collection of taxes for which there appeared to be no authority whatever, we will call attention to the comment of text writers upon the subject.

"Judge Cooley, in his valuable work on taxation, says:

"One very precise limit to the power to cure these proceedings is this: They can not be cured when there was a lack of jurisdiction to take them. This is a rule applicable to every species of legal proceedings. Curative laws may heal irregularities in action, but they can not cure a want of authority to act at all. (*Ib.*, 514, 3d ed.)

"The same author, in his work on Constitutional Limitations, says:

"So he who was never bound either legally or equitably can not have a demand created against him by a mere legislative enactment. (*Ib.*, 454, 6th ed.) A retrospective statute curing defects in legal proceedings where they are in the nature of irregularities, and do not extend to matters of jurisdiction, is not void on constitutional grounds, unless expressly forbidden. (*Ib.*, 456.) If the thing wanting or which failed to be done, and which constituted the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute. (*Ib.*, 457.) A curative statute can only be valid when the defect which it seeks to obviate is the lack of some formality which the legislature might have dispensed with in advance, or where the irregularity which is intended to be excused is one which the legislature might in advance have rendered immaterial. Black on Constitutional Prohibition (sec. 215).

"In the early case of Fletcher *v.* Peck (6 Cranch, 87), where one of the questions before the court was the constitutionality of an act of the legislature of Georgia which sought to impair the land title of one of the parties, in delivering the opinion of the court, Chief Justice Marshall (*ib.*, 135-136) said:

"It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation. To the legislature all legislative power is granted; but the question whether the act for transferring the property of an individual to the public be in the nature of the legislative power is well worthy of serious reflection.

"In Bennett *v.* Fisher (26 Iowa, 497, 501), Chief Justice Dillon, in speaking of retrospective laws, says:

"Such exercise of power can only be defended upon principle and sustained in law where they are not directed against the vested rights of particular individuals or classes.

"The case of Hart *v.* Henderson (17 Mich., 218) involved the constitutionality of a legislative act which was sought to be construed as validating an illegal tax. In declaring the act, with such construction, as unconstitutional, Judge Cooley, in speaking for the court, says:

"Curative statutes may cover any mere irregularity in the course of proceeding for the enforcement of a lawful demand; but they can never cure a want of jurisdiction, either in tax proceedings or those of any other description. Nothing is a tax simply by being called so, for any proceedings by which a man's property is to be taken from him on a claim which has no other basis than the naked declaration of the legislature that it shall constitute a demand against him, is unconstitutional and void.

"In the case of Kimball *v.* Rosendale (42 Wis., 407), this question was discussed by Chief Justice Ryan, and he said:

"Perhaps the true limit of the curative power of the legislature, as gathered from all the authorities and sanctioned by principle, is or ought to be that it can reach things voidable only, not void; defects of execution only, not of authority or jurisdiction; and is confined to defective proceedings under previous legislative authority. (*Ib.*, 412-413.)

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"In the case of Daniels *v.* Watertown (61 Mich., 514), personal property had been seized and sold by the tax collector under a void assessment, and after suit brought by the owner of the property against the town to recover the proceeds of the sale the legislature passed a curative act validating the assessment. It was held that the rights of the parties became vested prior to such legislation and were not affected thereby.

"In People *v.* Goldtree (44 Cal., 325), in passing upon the constitutionality of a legislative act enacted for the purpose of curing a defective assessment of taxes, the court says:

"It is impossible to draw a well-defined line between the classes of defects which may and those which may not be remedied by curative legislation, nor are the authorities on the subject reconcilable.

"And, further—

"We think it can be safely laid down as a rule in these matters that whenever the officer had no power or jurisdiction to do the act in question, and not that in its performance he did not pursue the law in respect to time, mode, or some other particular, the act is void, and subsequent legislation can not cure the defect.

"The counsel for the defendant has cited Grim *v.* Weissenberg (57 Pa. St., 433) as sustaining their contention that the act in question is effectively curative. That was a case arising during the late civil war where a tax for raising a bounty for volunteers was levied without any authority of law. This tax was subsequently ratified by the legislature, and this curative statute was held valid for that purpose. How much the necessities of war may have influenced this decision it is unnecessary to inquire, and it is sufficient to say that Judge Cooley, in his work on taxation, refers to this case in a note, and speaks of another case immediately following it as 'a more doubtful one.' Cooley on Taxation (515, note 1, 3d ed.).

"The same criticism might be made of the case of Kunkle *v.* Franklin (13 Minn., 127), where a similar war tax was illegally imposed and subsequently ratified by the legislature, and where doubt as to the soundness of the doctrine is expressed in the opinion itself; for the court in holding the curative statute valid says:

"Although this question is not free from doubt and embarrassment, we think it must be answered in the affirmative. It is true, as said by Mr. Chancellor Kent, that a retrospective statute affecting and changing vested rights is very generally considered in this country as founded on unconstitutional principles, and consequently inoperative and void.

"The case of Hamilton *v.* Dillin (21 Wall., 92) is also relied upon by the counsel for the defendant. With reference to that case it is sufficient to say (1) the tax was held legal without any validating act, and (2) the tax was also a proper exercise of the military power of the President against an enemy in time of war.

"Any number of cases might be further cited where this question is discussed and decided; and in nearly all of them the same rule is kept in view and maintained—i. e., that retrospective statutes relating to defects in tax proceeding are valid only to the extent of curing such defects as are in the nature of irregularities, and can not extend to matters of jurisdiction. We believe there are but few cases where this rule has not been followed; and in those cases the decisions are based upon exceptional circumstances which bring them near to the border line before mentioned.

"If a tax can be imposed and collected under an Executive order without any authority whatever of the Congress, where the sole authority for taxation under the Constitution rests, and such illegal act can be afterwards validated by Congress to the extent of refusing redress to parties who have paid this tax under duress, it would seem that there was no limit to retroactive legislation by Congress except such as is provided in express terms by the Constitution.

"If the claimants had refused to submit to the imposition of the tax in question, and had taken their merchandise into the Philippine Islands clandestinely, thus evading its payment, it would not be claimed that they could be convicted of the crime of

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smuggling; indeed, it would not be contended that any duty could be recovered of them by virtue of said validating act of Congress. This being so, we are confronted in this case with the anomaly of the claim that the Congress by said act has imposed a burden upon those who have peacefully submitted to the imposition of an illegal tax, trusting to the courts for redress, which might have been successfully avoided by a disregard and contempt of the military authorities of the Government. A mere statement of this claim appears so shocking to every sense of justice and idea of good citizenship as to need no argument to show its unsoundness.

"It is unnecessary to say that at the time the Executive order in question was issued its provisions were well within the war power of the President, and that all taxes received under it were collected only during such times as it was deemed a proper exercise of such power. The different views which were entertained upon that subject were set at rest, however, by the decision of the Supreme Court in Lincoln *v.* United States (*supra*), and which has given rise to the present litigation.

"The demurrer is overruled, with leave to the defendants to further plead as they may be advised at any time within sixty days."

Charles J. Bonaparte, Attorney-General, *Henry M. Hoyt*, Solicitor-General, and *Josiah A. Van Orsdel*, assistant Attorney-General (*George M. Anderson*, special attorney, with them on the brief), for the United States.

Henry M. Ward and *Frederic R. Coudert* (*John G. Carlisle* and *Paul Fuller* with them on the brief), for the importers.

Mr. Justice WHITE delivered the opinion of the court.

In an endeavor to clarify the consideration of this controversy we invert somewhat the order in which the facts have been stated in the findings below and refer to previous rulings of this court pertinent to the subject in hand, besides supplementing the same by a reference to relevant matters of public history, of which we take judicial notice.

After the Philippine Islands came under the military control of the United States, the President, on July 12, 1898, issued an order providing for the enforcement by the military power in those islands of a system of tariff duties. This order, promulgated by the Secretary of War, was accompanied with an enumeration of the tariff proposed and regulations for the collection of the same. However, for causes which need not be referred to, the tariff in question was subsequently modified and did not go into operation until November, 1898.

The duties imposed by this tariff were levied on goods coming into the Philippine Islands, whether from the United States or other countries. This tariff was in force when the treaty of peace was signed (December 10, 1898), when the treaty was ratified (April 11, 1899), and was continued by the Philippine commission appointed by the President in April, 1900. Indeed, the civil government, as established in the islands by the President, either in virtue of his inherent authority or as a result of the power recognized and conferred by the act of Congress approved March 2, 1901 (31 Stat., 910), continued the original tariff in force, except as to some modifications not material to be noticed, and formulated its provisions in the shape of a legislative act entitled "An Act to revise and amend the tariff laws of the Philippine Archipelago." And this tariff was in force in March, 1902, when it was expressly approved and continued by Congress (32 Stat., 54).

In December, 1901, the cases of De Lima *v.* Bidwell and Dooley *v.* United States were by this court decided (182 U. S. 1, 222). The first case involved the right to recover duties paid under protest to the collector of the port of New York upon sugar brought into the United States from the island of Porto Rico during the autumn of 1899 and subsequent to the cession of the island. The second case involved the right to recover the amount of certain duties on goods carried into Porto Rico from the United States between July 6, 1898, and May 1, 1900, the duties in question having

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been levied by authority of the general in command of the army of occupation or subsequently by order of the President as commander-in-chief. In the first case (De Lima v. Bidwell) it was decided that, as the effect of the ratification of the treaty was to take the island of Porto Rico out of the category of foreign territory within the meaning of that word as used in existing tariff laws of the United States, no right remained to enforce, against goods coming from Porto Rico into the United States, the previously enacted tariff of duties, although, considering the terms of the treaty and the relation of the island to the United States, Congress had power to impose a tariff on goods coming from that island into the United States. As a corollary of the doctrine announced in De Lima v. Bidwell, in the second case (Dooley v. United States) it was held that whilst the President, as commander-in-chief, had authority to impose tariff duties in Porto Rico on goods coming into that country from the United States prior to the ratification of the treaty, no such executive power existed after that ratification It was consequently held that none of the duties paid prior to the ratification of the treaty could be recovered, whilst those paid subsequently could be.

In the following year (December 2, 1901) another case, entitled Dooley v. United States, was decided (183 U. S., 151). That case involved the validity of tariff duties levied in Porto Rico on goods brought into that island from the United States, the duties in question having been imposed after the ratification of the treaty and in and by virtue of the act of Congress known as the Foraker act. Applying the principles announced in the previous cases just referred to, it was held that the duties were lawful because, although collected after the ratification, they were imposed not simply by virtue of the authority of the President, acting under the military power, but in conformity to a valid act of Congress.

And on the same day with the foregoing the case of Fourteen Diamond Rings was decided (183 U. S., 176). That case involved the validity of tariff duties levied on diamond rings brought from the Philippine Islands into the United States. Adhering to the doctrines settled by the prior rulings, it was held that, as the Philippine Islands, by the ratification of the treaty, had ceased to be foreign within the meaning of the tariff laws, the imposition of the duties complained of was unlawful. In the course of the opinion the effect of the treaty as applied in the previous cases to Porto Rico was pointed out, and the status of the Philippine Islands in virtue of the treaty was, in effect, held to be controlled by the former decisions.

In April, 1905, the two cases of Lincoln v. United States and Warner, Barnes & Co. (Limited) v. United States were by this court decided (197 U. S., 419; T. D. 26393). The cases came here, one on error to the district court of the United States for the southern district of New York, and the other by appeal from the Court of Claims. The one (Lincoln case) was commenced on March 29, 1902, the other (Warner, Barnes & Co. case) on January 17, 1902. In both cases recovery from the United States was sought of the amount of duty paid upon goods taken from the United States into the Philippine Islands after the ratification of the treaty with Spain and before the passage of the act of Congress of March 8, 1902. Reversing the judgments which had been rendered below in both cases in favor of the United States, it was declared that there was nothing in the situation of the Philippine Islands which took that territory out of the reach of the doctrine announced in the previous cases which we have reviewed, and it was therefore decided that the President was without power, after the ratification of the treaty, in the absence of express authority from Congress, to impose the tariff duties in question. A contention on the part of the United States that Congress, by the second section of the act approved July 1, 1902 (entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes"), had ratified the action of the President in imposing and collecting the duties in controversy, therefore no recovery could be had, was held to be unfounded, for grounds stated in the opinion, to which we shall hereafter advert. The case was heard upon rehearing, and in a decision

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announced on May 28, 1906, the views previously entertained by the court were reiterated and adhered to (202 U. S., 484; T. D. 27413). In the month following (June, 1906) Congress passed an act containing a provision which reads as follows (34 Stat., 636):

That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eight, nineteen hundred and two, at all ports and places in said islands, upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March eight, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed.

Now, this case was commenced, after the decision in the Fourteen Diamond Rings, to recover the amount of tariff duties exacted in the Philippine Islands on merchandise brought from the United States, the duties having been collected under the authority of the order of the President after the ratification of the treaty, but before the time when Congress, by section 1 of the act of March 8, 1902, had enacted tariff duties for the Philippine Islands. The case was pending in the Court of Claims when the Lincoln and Warner, Barnes & Co. cases were decided by this court. It was found by the court below that the military officers of the United States collected the duties and paid over the amount thereof to the treasurer of the Philippine Islands, and that the money was disbursed for the expenses of that government without going into the Treasury of the United States. Considering that the original illegality of the duties complained of was established by the previous decisions of this court, and that the act of Congress of June 30, 1906, ratifying the collection of duties was beyond the power of Congress, to enact, the court below rendered judgment against the United States for the amount of duties paid.

Applying the doctrine settled by this court in the cases to which we have referred, concerning the power to levy tariff duties under the authority of the President, on goods taken from the United States into Porto Rico and the Philippine Islands, or brought into the United States from either of such countries subsequent to the ratification of the treaty and prior to the levy by Congress of tariff duties, it is obvious that the court below correctly held that such tariff exactions were illegal. It follows, therefore, that the only question open for consideration is whether the court below erred in refusing to give effect to the act of Congress of June 30, 1906, which ratified the collection of the duties levied under the order of the President.

As the text of the act of Congress is unambiguous and manifests as explicitly as can be done the purpose of Congress to ratify, the case comes to the simple question whether Congress possessed the power to ratify which it assumed to exercise. When the controversy is thus reduced to its ultimate issue we think the error committed by the court below, both in reason and authority, is readily demonstrable.

That where an agent, without precedent authority, has exercised in the name of a principal a power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act and thus retroactively give it validity when rights of third persons have not intervened, is so elementary as to need but statement. That the power of ratification as to matters within their authority may be exercised by Congress, State governments, or municipal corporations is also elementary. We shall not stop to review the whole subject or cite the numerous cases contained in the books dealing with the matter, but content ourselves with referring to two cases as to the power of Congress, which are apposite and illustrative. In Hamilton *v.* Dillin (21 Wall., 73) the facts were as follows: During the Civil war the Secretary of the Treasury, with the sanction of the President, adopted rules and regulations for granting permits to trade between the belligerent lines. One of these rules exacted the payment of a contribution, styled a fee, of 4 cents a pound on cotton purchased.

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Hamilton, having taken a permit and paid Dillin, surveyor of the port of Nashville, Tenn., under the regulations, a sum of money for a permit to trade in cotton, sued to recover the same as having been illegally exacted. In deciding the case (p. 88) the court came to consider whether "the action of the Executive was authorized, or, if not originally authorized, was confirmed by Congress." Both these questions were determined in the affirmative. When the court came to consider the legislation relied upon as having confirmed the acts of the President in establishing the regulations in question, after stating the same the court declared "we are also of opinion that the act of July 2, 1864, recognized and confirmed the regulations in question." Mattingly *v.* District of Columbia (97 U. S., 687) concerned the validity of an act of Congress in effect confirming the doings of the board of public works of the District of Columbia touching the improvement of streets and roads and ratifying certain void assessments for street improvements. The court said (p. 690):

We do not propose to inquire whether the charges of the bill are well founded. Such an inquiry can have no bearing upon the case as it now stands; for were it conceded that the board of public works had no authority to do the work that was done at the time when it was done, and consequently no authority to make an assessment of a part of its cost upon the complainant's property, or to assess in the manner in which the assessment was made, the concession would not dispose of the case, or establish that the complainants have a right to the equitable relief for which they pray. There has been Congressional legislation since 1872, the effect of which upon the assessments is controlling. There were also acts of the legislative assembly of the district, which very forcibly imply a confirmation of the acts and assessments of the board of which the bill complains. If Congress or the legislative assembly had power to commit to the board the duty of making the improvements, and the power to prescribe that the assessments should be made in the manner in which they were made, it had power to ratify the acts which it might have authorized. And the ratification, if made, was equivalent to an original authority, according to the maxim, "*Omnis ratihabitio retrotrahitur et mandato priori æquiparatur.*" Under the Constitution Congress had power to exercise exclusive legislation in all cases whatsoever over the district, and this includes the power of taxation. Cohen *v.* Virginia (6 Wheat., 264). Congress may legislate within the district, respecting the people and property therein, as may the legislature of any State over any of its subordinate municipalities. It may therefore cure irregularities, and confirm proceedings which without the confirmation would be void, because unauthorized, provided such confirmation does not interfere with intervening rights.

It is then evident, speaking generally, both on principle and authority, that Congress had the power to pass the ratifying act of June 30, 1906, and that that act bars the plaintiff's right to recover, unless by the application of some exception this case is taken out of the operation of the general rule. And this brings us to consider the several propositions relied upon at bar to establish that such is the case.

1. Whilst it is admitted that Congress had the power to levy tariff duties on goods coming into the United States from the Philippine Islands or coming into such islands from the United States after the ratification of the treaty, it is yet urged that as that body was without authority to delegate to the President the legislative power of prescribing a tariff of duties, it hence could not by ratification make valid the exercise by the President of a legislative authority which could not have been delegated to him in the first instance. But the premise upon which this proposition rests presupposes that Congress in dealing with the Philippine Islands may not, growing out of the relation of those islands to the United States, delegate legislative authority to such agencies as it may select, a proposition which is not now open for discussion. Dorr *v.* United States (195 U. S., 138).

2. As the duties collected were illegal, it is insisted that for the purpose of testing the validity of the act of Congress the fact of such collection must be put out of view, and the act ratifying the exaction must be treated as if it were solely an original exercise by Congress of the taxing power. This being done, it is said, reduces the case to the inquiry, Had Congress power, years after goods which were entitled to free entry had been brought into the Philippine Islands, to retroactively impose tariff

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duties upon the consummated act of bringing the goods into that country? But the proposition begs the question for decision, by shutting out from view the potential fact that when the goods were brought into the Philippine Islands there was a tariff in existence under which duties were exacted in the name of the United States. Indeed, the contention goes further even than this, since it entirely disregards the important consideration that although the duties were illegally exacted the illegality was not the result of an inherent want of power in the United States to have authorized the imposition of the duties, but simply arose from the failure to delegate to the official the authority essential to give immediate validity to his conduct in enforcing the payment of the duties. And when these misconceptions are borne in mind it results that the unsoundness of the proposition relied upon is demonstrated by the application of the elementary principle of ratification to which we have previously referred. Moreover, the fallacy which the proposition involves becomes yet more obvious when it is observed that the contention can not even be formulated without misstating the nature of the act of Congress; in other words, without treating that act as retrospective legislation enacting a tariff, when on its very face the act is but an exercise of the conceded power dependent upon the law of agency to ratify an act done on behalf of the United States which the United States could have originally authorized.

3. It is urged that the ratifying statute can not be given effect without violating the Fifth Amendment to the Constitution, since to give efficacy to the act would deprive the claimants of their property without due process of law, or would appropriate the same for public use without just compensation. This rests upon these two contentions: It is said that the money paid to discharge the illegally exacted duties after payment, as before, "justly and equitably belonged" to the claimants, and that the title thereto continued in them as a vested right of property. It is consequently insisted that the right to recover the money could not be taken away without violating the Fifth Amendment, as stated. But here, again, the argument disregards the fact that when the duties were illegally exacted in the name of the United States Congress possessed the power to have authorized their imposition in the mode in which they were enforced, and hence from the very moment of collection a right in Congress to ratify the transaction, if it saw fit to do so, was engendered. In other words, as a necessary result of the power to ratify, it followed that the right to recover the duties in question was subject to the exercise by Congress of its undoubted power to ratify. To hold to the contrary would be to say that whilst the unauthorized act of an officer done on behalf of the United States was subject to ratification by the United States, yet if the officer acted without authority the act when performed annihilated the power to ratify—that is, that the very condition which engendered the power destroyed it.

But if it be conceded that the claim to a return of the moneys paid in discharge of the exacted duties was in a sense a vested right, it in principle, as we have already observed, would be but the character of right referred to by Kent in his Commentaries, where, in treating of the validity of statutes retroactively operating on certain classes of rights, it is said (vol. 2, pp. 415, 416):

> The legal rights affected in those cases by the statutes were deemed to have been vested subject to the equity existing against them, and which the statutes recognized and enforced. Goshen *v.* Stonington (4 Conn., 209); Wilkinson *v.* Leland (2 Pet., 627); Langdon *v.* Strong (2 Vt., 234); Watson *v.* Mercer (8 Pet., 88); 3 Story's Commentaries on the Constitution (267).

Nor does the mere fact that at the time the ratifying statute was enacted this action was pending for the recovery of the sums paid cause the statute to be repugnant to the Constitution. The mere commencement of the suit did not change the nature of the right. Hence again if it be conceded that the capacity to prosecute the pending suit to judgment was in a sense a vested right, certainly also the power of the United

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States to ratify was, to say the least, a right of as high a character. To arrogate to themselves the authority to divest the right of the United States to ratify is then in reason the assumption upon which the asserted right of the claimants to recover must rest.

Considering how far the bringing of actions would operate to deprive Government of the power to enact curative statutes which, if the actions had not been brought, would have been unquestionably valid, Cooley, in his Constitutional Limitations, says (7th ed., p. 543):

Nor is it important, in any of the cases to which we have referred, that the legislative act, which cures the irregularity, defect, or want of original authority, was passed after suit brought, in which such irregularity or defect became matter of importance. The bringing of suits vests in a party no right to a particular decision (Bacon v. Callender, 6 Mass., 303; Butler v. Palmer, 1 Hill, 324; Cowgill v. Long, 15 Ill., 202; Miller v. Graham, 17 Ohio St., 1; State v. Squires, 26 Iowa, 340; Patterson v. Philbrook, 9 Mass., 151), and his case must be determined on the law as it stands, not when the suit was brought, but when the judgment is rendered. Watson v. Mercer (8 Pet., 88); Mather v. Chapman (6 Conn., 54); People v. Supervisors, etc. (20 Mich., 95); Satterlee v. Matthewson (16 S. and R., 169, and 2 Pet., 380); Excelsior Manufacturing Company v. Keyser (62 Miss., 155); Phenix Insurance Company v. Pollard (63 Miss., 641); McLane v. Bonn (70 Iowa, 752; 30 N. W., 478); Johnson v. Richardson (44 Ark., 365).

And the following cases, in various forms, illustrate the application of the principle: United States v. Morris (10 Wheat., 246); Grim v. School District (57 Pa. St., 433, 438); City of Chester v. Black (132 Pa. St., 568); Price v. Huey (22 Ind., 18); Welch v. Wadsworth (30 Conn., 149, 158); Rich v. Flanders (39 N. H., 310–311); Iowa Railroad Land Company v. Soper (39 Iowa, 112, 119); Ferry v. Campbell (110 Idaho, 290); Mills v. Geer (111 Ga., 275, 279, 287, 288).

4. Aside, however, from principle and the general result of the adjudged cases, it is finally insisted that the want of power in Congress to ratify the collection of the duties in question under the circumstances here disclosed conclusively results from the decision in De Lima v. Bidwell (182 U. S., 1). As we have seen, that case concerned the validity of collections of duties in the port of New York on goods brought into the United States from Porto Rico, and whilst insisting on the legality of the duties, the Government at the same time urged that, even if originally invalid, they had yet been ratified as the result of provisions of a specified act of Congress which had been passed after the suit to recover the duties had been commenced. As that portion of the duties sued for which had been collected after ratification of the treaty were decided to be illegal, it followed that a decision as to the question of ratification was required. In passing upon the subject, after intimating doubt as to whether the act relied upon, as manifesting the intention of Congress to ratify, was intended to have that effect, it was remarked (p. 199):

It can clearly have no retroactive effect as to moneys theretofore paid under protest for which an action to recover back had already been brought. As the action in this case was brought March 13, 1900, eleven days before the act was passed, the right to recover the money sued for could not be taken away by a subsequent act of Congress. Plaintiffs sue in assumpsit for money which the collector has in his hands, justly and equitably belonging to them. To say that Congress could by a subsequent act deprive them of the right to prosecute this action, would be beyond its power. In any event, it should not be interpreted so as to make it retroactive. Kennett's Petition (24 N. H., 139); Alter's Appeal (67 Pa. St., 341); Norman v. Heist (5 W. and S., 171); Donovan v. Pitcher (53 Ala., 411); Palairet's Appeal (67 Pa. St., 479); State v. Warren (28 Md., 338).

Now, considering the language just quoted in connection with the doubt expressed as to the import of the alleged ratifying statute, it results that the reasoning employed stated two considerations, first, the want of power in Congress to ratify after suit brought; and, second, the duty of construing the statute relied upon so as not to produce ratification, in view of its ambiguity. As the question of construction was last

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stated and that question was declared to be "in any event" decisive, we think the observations made concerning the want of power to ratify after suit brought must be regarded as not having been necessary to the decision rendered, and therefore must be treated as *obiter*. And this interpretation was, we think, applied in the cases of Lincoln *v.* United States and Warner, Barnes & Co. *v.* United States (*supra*). In those cases, as we have said, one of the defenses insisted upon by Government was a ratification alleged to have been operated by the act of Congress of July 1, 1902, which was passed after the bringing of the actions to recover. It is patent on the face of the opinion announced on the original hearing that the decision was exclusively based upon the ground that the act of Congress was so ambiguous concerning the ratification relied upon that it should not be implied that such ratification was contemplated. And it is to be observed that De Lima *v.* Bidwell was not overlooked, since that case was referred to in the course of the opinion On the rehearing the case was argued on questions submitted by the court, viz. whether the act relied upon manifested the purpose to ratify, and if it did, whether Congress had power so to do. In the opinion on the rehearing, while the court reiterated the view previously expressed, that the act could not be treated as ratifying the collection of the duties sought to be recovered because of its ambiguity in that regard, yet it expressly recognized the power in Congress to ratify, and in effect declared that as to those things to which the alleged ratifying act clearly applied ratification had resulted. This is so, since in the course of the opinion, in answering the argument that the alleged ratifying statute would be meaningless unless it was held applicable to the particular duties in controversy, it was pointed out (p. 499) that there were duties which had been levied and collected other than those in controversy to which the act clearly applied, and "that question (as to them) was put at rest by this ratification." Further, in calling attention to the ambiguity in the ratifying statute relied upon and the resulting doubt whether it embraced all duties, it was pointed out that the fact that actions were pending at the time of the passage of the ratifying act lent cogency to the view that if Congress had intended by the ratification to affect them, it would have explicitly so declared. On this subject the court said (p. 498):

> This construction is favored by the consideration that the suits had been begun when the act of July 1, 1902, was passed, and that, even if Congress could deprive plaintiffs of their vested rights in process of being asserted (Hamilton *v.* Dillin, 21 Wall., 73), still it is not to be presumed to do so on language which, literally taken, has a narrower sense.

Certainly, this language, particularly in view of the reference made to Hamilton *v.* Dillin, is wholly incompatible with the conception that the observation as to pending actions made in De Lima *v.* Bidwell was to be taken as having settled the proposition that a power to ratify which otherwise obtained could not be exerted after suit brought.

Be this as it may, however, as after deliberate consideration we are of opinion that the mere bringing of this action did not deprive Congress of its power to ratify the collections made by its officers in the name of the United States of the moneys sought to be recovered in this action, we may not allow the remarks made in De Lima *v.* Bidwell under the circumstances stated to control our judgment.

There was much discussion at bar concerning whether the payments of the duties were voluntary. As it would seem that the circumstances surrounding these payments were substantially like unto those existing in the Lincoln and Warner, Barnes & Co. cases, in which the opinions of the court made no reference to the question of voluntary payment, we have concluded to pass that question by, as our conclusion on the subject of ratification disposes of the controversy.

Reversed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissent.

Mr. Justice MOODY took no part in the decision of the cause.

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Mr. Justice HARLAN, concurring:

By the act of 1906 (34 Stat., 636), Congress legalized, ratified, and confirmed, as fully to all intents and purposes as if the same had by prior act been specifically authorized and directed, the collection of all duties, both import and export, imposed by the authorities of the United States or of the provisional military government in the Philippine Islands, prior to March 8, 1902, at all parts and places in said islands, from the United States or from foreign countries. Interpreted in the light of previous and pending litigation, this act should be construed as denying the authority of any court to take cognizance of a suit brought against the United States to recover any claim arising out of such collections. The act should, therefore, be construed as withdrawing the consent of the United States to be sued on account of claims of that character. In this view, it was error to render judgment against the United States, whatever might be the liability of the collector, if his exaction of the duties in question was without authority of law. Upon this ground alone, and without considering any of the questions discussed in the opinion of the court, I concur in the judgment of reversal.

(T. D. 28238.)

Waste bagging.

DAVIES *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Louisiana. May 31, 1907. No. 13422 (suit 1885).

WASTE BAGGING—COVERING FOR COTTON.

Pieces of jute bagging used in patching the covering for bales of cotton are dutiable as waste under paragraph 463, tariff act of 1897, rather than under paragraph 344, relating to "bagging for cotton, * * * and similar fabrics, suitable for covering cotton."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6431 (T. D. 27586), overruling a protest of Frank Davies against the assessment of duty by the collector of customs at the port of New Orleans.

The question in the case is whether the merchandise was properly classified under paragraph 344, tariff act of 1897, relating to "bagging for cotton, gunny cloth, and similar fabrics, suitable for covering cotton," or, as contended by the importer, was dutiable under paragraph 463, relating to "waste, not specially provided for."

The character of the material involved appears from the following extract from the Board's opinion:

DE VRIES, *General Appraiser:* In our judgment, jute bagging which is waste *per se* is old or used bagging, refuse bagging in condition as removed from bales of cotton at cotton mills; and when this waste is carefully gone over and culled, and good serviceable, measurable pieces selected and assorted, all of uniform size or within a certain radius of sizes, as in these cases, then baled and shipped to this country for no other use than to cover or patch bales of cotton, as were these importations, and actually used for that purpose, as were these importations, it would seem that such bagging, by virtue of the manipulation to which it has been subjected abroad and the uses for which it has been imported, if it ever were waste, has ceased to be waste, and that its identity as bagging has thereby been established.

Following the decision of the Supreme Court in Patton *v.* United States (159 U. S., 500), defining waste to be "refuse or material that is not susceptible of being used for

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the ordinary purposes of manufacture," the Board held that the merchandise was not waste but had been correctly assessed. Much additional evidence was taken in the circuit court.

Rufus W. Sprague, jr., for the importer.
William Wirt Howe, United States attorney, for the United States.

EXTRACT FROM DECREE.

BOARMAN, *District Judge:* The cause having been argued * * * and the law and the evidence being in favor of the petitioner, it is now ordered, adjudged, and decreed that there was error in the opinion of the Board of General Appraisers in this matter and that their decision herein be and the same is hereby reversed. It is further ordered, adjudged, and decreed that the merchandise which is the subject of this proceeding is dutiable at the rate of 10 per cent ad valorem under the tariff act of July 24, 1897, paragraph 463, as "waste" not specially provided for in said act.

NOTE.—An appeal to the circuit court of appeals, fifth circuit, has been directed in behalf of the United States.

(T. D. 28239.)

Cauliflower in brine.

Appeal directed from decision of Board of United States General Appraisers of May 21, 1907, G. A. 6593 (T. D. 28174), involving the classification of cauliflower in brine.

TREASURY DEPARTMENT, *June 13, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers of May 21, 1907, G. A. 6593 (T. D. 28174), wherein it was held that cauliflower imported in brine is dutiable as a vegetable in its natural state under paragraph 257 of the tariff act, and not as a vegetable prepared or preserved under paragraph 241 of the said act.

As the issue is an important one, you are hereby directed to file an application for a review of the said decision, in accordance with the provisions of section 15 of the act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(47480.) *Assistant Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28240.)

Common carrier.

Approving bond of George W. Bush & Sons Company for transportation of appraised merchandise between Philadelphia, Pa., and Wilmington, Del.

TREASURY DEPARTMENT, *June 15, 1907.*

SIR: The bond of the George W. Bush & Sons Company, transmitted with your letter of the 10th instant, for bonding said company for the transportation of appraised merchandise between the ports of Wilmington, Del., and Philadelphia, Pa., is hereby approved, and one copy of said bond is inclosed for the files of your office.

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Under said bond, the carrier named is authorized to transport appraised merchandise between the ports of Wilmington and Philadelphia in suitable American vessels owned or controlled by it and plying on the waters of the Christiana and Delaware rivers, and in cars running on such connecting lines of railroads as may be necessary to reach the port of destination specified in the entry and manifest in each case.

The bond of the above-named company for the transportation of unappraised merchandise has been approved and one copy of the same transmitted to the collector at Philadelphia for the files of his office.

Respectfully, JAMES B. REYNOLDS,
(47129.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Wilmington, Del.*

(T. D. 28241.)

Sarreguemines ware.

Appeal directed from decision of Board of United States General Appraisers, Abstract 15576 (T. D. 28223).

TREASURY DEPARTMENT, *June 15, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, Abstract 15576 of May 27, 1907 (T. D. 28223), wherein it is held that certain so-called "sarreguemines ware" is properly dutiable at the rate of 25 per cent ad valorem as common yellow earthenware under paragraph 94 of the act of July 24, 1897, and not dutiable at the rate of 55 per cent ad valorem as earthenware not specially provided for under paragraph 96, as assessed.

In view of the importance of the issue, you are hereby directed to file an application for review of the said decision of the Board, in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(27523.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28242.)

Willow cricket bats, etc.

Cricket bats and other articles manufactured from willow dutiable at the rate of 40 per cent ad valorem under paragraph 206, tariff act of 1897.

TREASURY DEPARTMENT, *June 15, 1907.*

SIR: The Department is in receipt of information that it is the practice at your port to classify cricket bats at the rate of 35 per cent ad valorem under paragraph 208 of the tariff act.

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The Department concurs in the opinion expressed by the Board of United States General Appraisers in its decision of February 25, 1904, G. A. 5596 (T. D. 25062), that the provision in paragraph 206 of the tariff act for manufactures of willow excludes from classification under paragraph 208 all manufactures of willow, except house or cabinet furniture, wholly or partly finished, and to the end that there may be a uniformity of practice in the classification of the merchandise referred to, you are hereby instructed to classify cricket bats under paragraph 206 of the tariff act at the rate of 40 per cent ad valorem, as well as other articles manufactured from willow, or of which willow is the component material of chief value.

Respectfully, JAMES B. REYNOLDS,
(47295.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28243.)

Common carrier.

Approving bond of George W. Bush & Sons Company for transportation of unappraised merchandise from Philadelphia, Pa., to Wilmington, Del.

TREASURY DEPARTMENT, *June 15, 1907.*

SIR: The bond of the George W. Bush & Sons Company, transmitted by the collector at Wilmington, Del., on the 10th instant, for bonding said company for the transportation of unappraised merchandise from Philadelphia to Wilmington, is hereby approved, and one copy of said bond is inclosed for the files of your office.

Under said bond, the company named is authorized to transport unappraised merchandise from Philadelphia to Wilmington in suitable American vessels owned or controlled by it and plying on the waters of the Christiana and Delaware rivers and in cars running on such connecting lines of railroads as may be necessary to reach the ports of destination specified in the entry and manifest in each particular case.

Respectfully, JAMES B. REYNOLDS,
(47129.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28244.)

Miniature paintings in frames.

Miniature paintings in frames of silver or gold, set with precious stones, not dutiable under paragraph 484, tariff act of 1897.—Decision of United States circuit court for the southern district of New York in suit 4519 of United States *v.* M. Knoedler & Co. (T. D. 28282) acquiesced in.

TREASURY DEPARTMENT, *June 18, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the southern district of New York, in which he states

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that suit 4519 of United States *v.* M. Knoedler & Co. (T. D. 28282) was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of miniature paintings in frames, the frames being of silver or gold, some of which were set with precious stones, precious stones chief value. Duties were assessed thereon under the enumeration for precious stones, set, at 60 per cent ad valorem, paragraph 434 of the act of July 24, 1897. The importers protested, claiming the importations not to be jewelry, but properly dutiable at 45 per cent ad valorem as articles composed of metal, under paragraph 193 of the same act, which claim was sustained by the United States circuit court in this case.

The Attorney-General advises the Department that no further proceedings will be directed in this case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(40211.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28245—G. A. 6616.)

Pineapples preserved in own juice—Fruit in sugar.

1. Pineapples preserved in cans, in their own juice, containing total sugar ranging in quantity from 7½ per cent to 18 per cent, are dutiable under paragraph 263, tariff act of 1897, as "pineapples preserved in their own juice," and not under the provision in the same paragraph for fruit preserved in sugar.—Following United States *v.* Johnson (152 Fed. Rep., 164; T. D. 27830); Dudley *v.* United States, C. C. A. (T. D. 28052), and United States *v.* Boden (133 Fed. Rep., 839; T. D. 25945).

2. The sugar contained in such pineapples seems to be used for flavoring the fruit rather than for its preservation.

United States General Appraisers, New York, June 13, 1907.

In the matter of protests 166903, etc., of Oriental American Company against the assessment of duty by the collector of customs at the port of Portland, Oreg.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The merchandise covered by the protests in the schedule consists of Singapore pineapples contained in cans which were assessed for duty at 1 cent per pound and 35 per cent ad valorem under paragraph 263 of the tariff act of 1897 as fruits preserved in sugar not specially provided for in said act. The articles are claimed to be dutiable at 25 per cent ad valorem under said paragraph as pineapples preserved in their own juice.

The percentage of total sugar contained in these goods varies from about 7.5 to 18 per cent. The question at issue is one which has been

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the subject of litigation before the Board and various courts of the country for many years past.

In the cases of Dudley and of the Paul Taylor Brown Company, G. A. 5787 (T. D. 25577), it was found by this Board, after due consideration, that Singapore pineapples preserved in their own juices contain on an average as high as 14 per cent of total sugars, including what is known as "invert" sugar and a small percentage of cane sugar, which naturally appears in the pineapple itself. It was held accordingly that where the chemical analysis showed over 14 per cent of sugar in such fruit there was a probability that sugar had been added and that the fruit was accordingly dutiable as fruit preserved in sugar under said paragraph 263 at the rates there provided. This decision was affirmed by the circuit court for the southern district of New York, per Wheeler, *J.*, in 148 Federal Reporter, 333; T. D. 27516.

An appeal was taken to the circuit court of appeals, second circuit, in the case of Dudley *v.* United States, where the testimony showed that cane sugar had been added in the preserving process in quantities varying from 2.28 to 8.82 per cent. The decision of the circuit court and of the Board was reversed *per curiam*, with the following observation:

> Since the decision of this cause at circuit, our opinion has been filed in United States *v.* Johnson (152 Fed. Rep., 164; T. D. 27880), January 8, 1907, in which we had before us pineapples similarly preserved, except that the cans contained a trifle less sugar. We are unable to distinguish between the two causes, and therefore the decision of the circuit court is reversed. (T. D. 28052.)

In the case of Johnson *v.* United States, reported by the Treasury Department in T. D. 26941 (143 Fed. Rep., 915), decided by Judge Platt, and involving the same question, the following language was used:

> It appears that pretty much all the preservative qualities are found in the juice itself, the boiling of the pineapples in the juice, and the hermetically sealing of the contents in the tin cans, so as to exclude the atmosphere.
>
> It is true that the importation contains a little over 3 per cent of cane sugar extrinsically introduced by the manufacturers in the course of preparation; but it is not a fair inference from the testimony that this additional sugar acts in any substantial degree toward preserving the pineapple, but seems to have been added rather in the way of flavoring. The preservation of the pineapples, therefore, is substantially accomplished in the way suggested, and the addition of the cane sugar seems to be merely an incidental matter.
>
> The Board argues that although they are preserved in these other ways they are in sugar, and it is therefore proper to classify them as pineapples preserved *in* sugar. It seems to me that when Congress referred to fruits preserved in sugar it meant fruits in which sugar plays a prominent and important part in the act of preservation. I must, therefore, venture to disagree with the Board.

Accordingly the decision made by the Board in the case of *In re* Johnson, G. A. 5352 (T. D. 24494), was reversed on additional testimony taken before a referee after the appeal had been taken to the circuit court.

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An appeal was taken from this decision to the circuit court of appeals, which affirmed the decision of the circuit court, with the following observations made *per curiam:*

We concur fully in Judge Platt's opinion. Incidental reference may be made to our recent decision in Causse Manufacturing Company *v.* United States (151 Fed. Rep., 4; T. D. 27751), where we held that certain cherries were not preserved in their own juice when the juices which were retained in them only tended to produce their decay. In the case at bar *the* preservative qualities are found in the juice itself—the boiling of the pineapple in the juice and the hermetical sealing of the contents in the tin cans. The decision is affirmed.

A similar ruling was made by the circuit court for the northern district of California, decided as far back as November, 1904, in United States *v.* Boden (133 Fed. Rep., 839; T. D. 25945). The court in that case expressed the opinion that the quantity of sugar found in the merchandise was not sufficient to bring it within the classification covered by the higher rate. "It would not," said Judge Morrow, "preserve the fruit from spoiling if exposed to the air, but serves as a flavoring only," affirming the decision of the Board in that case.

We are not able to distinguish the cases under consideration from those decided by the courts, and accordingly hold that the sugar contained in these pineapples, which was added over and above the invert sugar contained in the fruit itself, was added not for the purpose of preservation, but only for flavoring the fruit.

The protests are all sustained and the decision of the collector reversed in each instance, with instructions to reliquidate the entries accordingly.

(T. D. 28246—G. A. 6617.)

Drilled pearls.

A number of drilled pearls, imported loose, matched as to size but not otherwise, except a mere regard for comparative color, and not with such care as would enhance their value as a collection, by similitude more closely resemble pearls in their natural state than an article of jewelry. The inexpensive process of temporarily stringing such pearls on a silk cord abroad, in order to facilitate their sale by enabling a prospective purchaser to judge of their appearance and effect when finally made into a necklace, does not operate to exclude them from admission at 10 per cent ad valorem under paragraph 436, tariff act of 1897, the rate of duty applicable to pearls in their natural state.—Tiffany *v.* United States (112 Fed. Rep., 672), United States *v.* Downing (201 U. S., 354; T. D. 27281), and Neresheimer *v.* United States (136 Fed. Rep., 86; T. D. 25876) cited.

McCLELLAND, *G. A.*, dissents.

United States General Appraisers, New York, June 14, 1907.

In the matter of protest 251326 of Bernard Citroen against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and McCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* On the 11th of June, 1906, the protestant in this case imported into the United States 37 drilled

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pearls, divided into five lots. Each lot was unstrung and inclosed in a separate paper. In his advisory report to the collector, the appraiser returned the merchandise as "drilled pearls—10 per cent." The collector, however, disregarded the appraiser's report, and classified the articles as pearls set or strung, or jewelry, at 60 per cent ad valorem under paragraph 434. The importer claims that the pearls in dispute are properly dutiable at 10 per cent ad valorem by similitude under paragraph 436 of the present tariff act.

The record in this case is voluminous, but a careful analysis of the testimony leads us to the following conclusions, viz:

Pearls of greater dimensions than the average are comparatively rare; hence it frequently requires several years' search in order to secure a sufficient number to form a necklace all accurately matched in the essential features of size, color, and luster. Such a collection thus assembled would no doubt command a higher price than the aggregate value of the separate pearls. On the other hand, a sufficient number of pearls, although of large size, required to form a necklace, matched as to size but not otherwise, except a mere regard for comparative color, could be assembled within a short time and at a price based upon the cost of each separate pearl. In order to dispose of thirty or more pearls to one purchaser, such a collection would usually be sold at a less price than the aggregate would amount to were each pearl sold separately. The evidence shows and we find that the pearls in question belong to the latter and not to the first class.

There is apparently no conflict in the testimony pertinent to the issue involved. The importer's witness who saw the pearls abroad testified that they were not matched as to color. Mr. Smith (importer's witness) expressed the opinion that they were fairly well matched, but not with such care as would enhance their value as a collection. The Government witnesses (who did not see the pearls), when asked if a collection of pearls matched in color, size, and the other requisites would be of more value than the sum of the value of the separate pearls, replied they would; but inasmuch as the evidence shows the pearls in dispute were not matched as suggested in the question, their testimony on this point is of little weight.

It is shown that loose pearls bear no marks by means of which it could be determined if they had ever been strung or set as jewelry. It further appears that it is not unusual for private parties to remove a pearl from a necklace and exchange it for one more desirable, the discarded pearl taking its place in trade among the unstrung pearls.

The courts have invariably held that statutes must not be so construed as to lead to vague and indefinite results, and what can be more uncertain than the determination of whether one or more imported drilled pearls have been set or strung as jewelry at any

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time in the past? Must the liquidation of the duty upon such articles be delayed for weeks—perhaps months—pending an investigation upon this point, or will the goods be turned over to the importer upon the payment of the regular duty, the vendee being left in doubt as to whether, after the goods have been disposed of and he is powerless to recoup himself, he will be called upon to pay to the Government additional duty amounting to one-half the value of the pearls? In Tiffany *v.* United States (112 Fed. Rep., 672) the court of appeals held that pierced pearls were by similitude dutiable at 10 per cent ad valorem under paragraph 436. The dictum of the court in this case that drilled pearls once having been made into jewelry were when unstrung more similar to jewelry than pearls in their natural state is explanatory of the Government's action in this case. We feel constrained to and invariably follow the ruling of the higher tribunal, but, assuming that their view upon the point referred to was a mere expression of opinion and perhaps not founded on a well-digested consideration of the subject, we deem ourselves justified and without impropriety in venturing to discuss this phase of the case to some extent.

Under the act of 1894 (par. 337) Congress, no doubt aware of the fact that stringing pearls on silk cords in the usual manner adapting them to be worn as necklaces was comparatively an inexpensive process, and unless they were made into jewelry by the addition of metal attachments, rated them for duty at 10 per cent ad valorem. The act of 1897, as the debates before Congress will show, decreased the duty on all precious stones not set or strung, in order to discourage smuggling, statistics having shown that the duty of 25 per cent ad valorem provided in the act of 1894 produced less revenue than 10 per cent ad valorem under the preceding act. It may be observed that cut diamonds are permitted entry at 10 per cent ad valorem; hence it follows that, inasmuch as the process of drilling pearls requires less skill and very much less expense than cutting diamonds, the plea of protecting American industry is not applicable. This becomes more apparent when we consider that a duty of 10 per cent on pearls and other precious stones is equivalent to at least 60 per cent on articles of infinitely less value; and, admitting that the cost of matching a sufficient number of pearls to form a necklace adds materially to their value, they have to be invoiced at their added value, and a duty of 10 per cent on that value would seem to be a sufficient amount to cover the increase in cost by assembling such a collection of pearls. Again, as a drilled pearl can be as readily smuggled as those undrilled, no plausible argument can be advanced to show Congressional intent to distinguish for dutiable purposes between drilled and undrilled pearls.

The soundness of the doctrine enunciated by Judge Lacombe, that drilled pearls were not pearls in their natural state, is technically

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open to no argument, but it is a well-recognized principle of revenue law that Congress gives to words contained in the tariff their commercial meaning without regard to technical accuracy.

As shown by the testimony, over 75 per cent of all large pearls when they first come into the hands of wholesale dealers are drilled (usually in a somewhat primitive manner by the pearl fishers); hence it would seem to follow that drilled pearls are *commercially* in their natural state. This is a mere inference, however, and is not founded on any testimony taken in this case.

Congress, as will be seen in the act of 1894, made no difference between pearls drilled and undrilled and even disregarded the insignificant cost of stringing. The act of 1897, however, saw fit in terms to exclude pearls strung from paragraph 436. But the language of this paragraph is significant of an intent to go no further than this. The paragraph reads:

436. Pearls in their natural state, not strung or set, ten per centum ad valorem.

Whole pearls may be set but can not be strung. Drilled pearls, on the contrary, although sometimes set, are more frequently strung. For this reason, no doubt, Congress used the two terms "set" and "strung." It is more difficult to ascribe a meaning to the words "in their natural state." It may be these words were regarded as sufficient to avoid conflicts between pearls temporarily strung and those permanently strung. But whatever may be the reason that led to the choice of language employed, the phrase "not set or strung" must be accepted as qualifying the phrase "pearls in their natural state," and may be regarded as a legal interpretation of its meaning, viz, that all pearls not further advanced than capable of being set or strung are constructively in their natural state and dutiable at 10 per cent. Pearls just as they come from the shell are, strictly speaking, only such as are in their natural state. Before becoming fit for stringing or setting they have to undergo processes of treating and polishing; hence some deviation from technical accuracy must be made. A fair interpretation of a somewhat involved or ambiguous paragraph would seem to include all pearls in the condition in which wholesale dealers handle them, ready for setting and stringing purposes. No other interpretation gives any force to the words in paragraph 436 "not strung," inasmuch as only drilled pearls can be strung. In United States *v.* Downing (201 U. S., 354; T. D. 27281), the Supreme Court held that the words "not decorated" employed in paragraph 97 included only substances capable of being decorated. Applying a like reasoning to paragraph 436, we reach the conclusion that all pearls *capable of being set or strung*, but not set or strung, were included therein, which interpretation would unquestionably admit whole pearls polished and pearls drilled.

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Turning from the proper classification for duty of drilled pearls as an academic question, we hold that, had these 37 pearls been assembled into a completed necklace abroad, and worn as such, they would, on the authority of Tiffany *v.* United States (*supra*), be dutiable as jewelry by similitude. But, as already stated, these pearls were imported loose in separate papers, and presumptively were dutiable as pearls in their natural state, by similitude. The burden of proof is on the Government to show that they had been at some time prior to importation strung as jewelry. The evidence fails to establish the fact. It is true that for several years these pearls were offered for sale collectively and were even strung on silk cords, not as jewelry, however, but in order to display their desirability as a collection suitable for a necklace—a condition which the trade have testified is not unusual. It frequently happens that several firms furnish one or more pearls, and the collection of pearls thus formed are strung for display and offered to a possible purchaser. Should a sale not be effected the pearls are returned to their respective owners. In our opinion, this is not sufficient to make such a chance collection of pearls jewelry, especially if, as in the present case, there has been no enhancement in their value by reason of a careful selection and matching as to size, color, and luster.

In accordance with the views herein expressed, and on the authority of Tiffany *v.* United States (*supra*) and Neresheimer *v.* United States (136 Fed. Rep., 86; T. D. 25876), we hold that the pearls in this case are dutiable by similitude at 10 per cent ad valorem under paragraph 436 and sustain the protest, the collector's decision being reversed.

DISSENTING OPINION.

McCLELLAND, *General Appraiser:* I am unable to concur either in the reasoning or the conclusion of the majority of the Board in this case. If the opinion of my colleagues correctly sets forth the law, then Congress has left the door so wide open that it would be difficult to imagine a condition under which an experienced trader would import into the United States pearls in such form as to entail the payment of duty thereon at a rate higher than 10 per cent ad valorem. I can not believe that it was intended by Congress that an aggregation of pearls, such as that here involved, which may have taken years to collect, grade, and match as to size and color, and which for several years before importation had been held intact and frequently offered for sale, if not as a necklace, at least as a very valuable collection of pearls, so arranged as to be made into a very high-grade pearl necklace, should be admitted to entry at the rate of duty provided for pearls in their natural state.

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I have carefully considered the construction of the law laid down by the United States circuit court of appeals in Tiffany *v.* United States (112 Fed. Rep., 672) and Neresheimer *v.* United States (136 Fed. Rep., 86; T. D. 25876), and am forced to the conclusion that what was lacking in those cases to warrant the Government's action in assessing duty at the jewelry rate of 60 per cent is supplied by the record here. This may best be illustrated by the court's reasons for holding that the pearls in neither the Tiffany nor Neresheimer cases were subject to the higher of duty.

In the Tiffany case Judge Lacombe, writing for the court, said:

> The goods in suit were not "jewelry," but were loose pearls, of various sizes, qualities, colors, and shapes, not set or strung, and not *matched or selected with a view to be then set or strung, and not adapted for such purpose in their then condition*, but to be put into the general stock of pearls of the importer, for such general use of pearls as the demands of the importer's trade should thereafter require.

Thus it appears that the only particular in which the Tiffany pearls as a collection compared with the pearls involved in this case is that they were drilled. They were neither set nor strung, matched, or selected with a view to being set or strung, and were only imported to be put into the general unassorted stock of the importer.

Substantially the same condition controlled in the Neresheimer case. In that case Judge Lacombe also wrote the opinion, and the following quotation therefrom shows the issue to have been in all essential particulars the same:

> They were of different sizes and not at all of the same color. They were so numerous that in each lot there were pearls which closely matched each other in size. But the test suggested in the Tiffany case is not such an assortment and selection as brings together a lot of pearls, each of which is so well chosen for luster, size, and color that it will command a higher price *The assortment and selection must be such as to produce a collocation of pearls similar to the collection found in the articles of jewelry known as necklaces or strung pearls*, where time and skilled labor have been applied to produce not merely a collection, but an aggregation such that the string of pearls thus produced is worth more than the aggregate values of the individual pearls composing it.

It also appears that the Neresheimer pearls were so imperfectly drilled that they had to be rebored, and that in addition some of them had to be repolished. And even after such reboring and repolishing it was shown that they went into the general stock of dealers who purchased them for making up different articles of jewelry.

The conditions presented by the record as to the pearls in this case are very different. The evidence shows that for several years before importation they had been, after being carefully selected, held intact and offered for sale, if not as a necklace actually made up ready for wear, as such an aggregation as was ready and suitable to be made, by reason of their graduation in size and harmony of color, into a necklace of great value. As such they had been displayed abroad, actually strung upon a silk cord, to several of the witnesses

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and offered for sale to them. It also appears that in such condition they had been shown and offered for sale in Paris to one Leeds and his wife, and that there were actual negotiations looking to the purchase thereof by the said Leeds. While the inference is not justified that there was an actual sale thereof in Paris to Mr. Leeds, it nevertheless is not open to question that they were subsequently sent to the United States by special representative of the exporter, who either directly or through a third party ultimately sold them to the said Leeds as a sequence of the Paris negotiations. It is shown by the invoice and confirmed by the record that, as imported, the pearls were loose and placed in five separate packages with as many different values, aggregating in United States currency $220,000; but this, in my judgment, does not alter the alternative fact that the aggregation had either been actually made into the form of a completed necklace before importation, or had been so selected and strung as to constitute it a necklace. There is no pretense that the pearls were not so matched before importation as to be especially for a necklace, and the issue in this case is further distinguished from that in the Tiffany and Neresheimer cases in that it does not appear that these pearls had to be rebored or repolished, nor that they became after importation a part of a general stock of pearls to be made up into various articles of jewelry. On the contrary, it affirmatively appears that they were brought into the United States in condition ready for stringing into a necklace and were actually sold for that purpose.

It is not to be overlooked that the burden of proof rested on the importer to establish his contention, and in this, in my opinion, he has utterly failed.

To hold that such an aggregation of pearls may only be subject to the rate of duty provided for pearls in their natural state would be equivalent to saying that no collection of pearls, no matter what had been their past history or for what purpose they have been selected, need ever be subjected to the rate of duty provided for articles of jewelry, for whenever it was desired to import pearl necklaces which as such would be articles of jewelry and subject to duty at the rate of 60 per cent ad valorem, all that would be necessary to do would be to remove the pearls from the gold clasp and silk string, of comparatively infinitesimal value, and import the pearls loose subject to duty only at the rate of 10 per cent ad valorem. See G. A. 5013 (T. D. 23338) and cases therein cited.

The following facts have, in my opinion, been clearly established by the evidence:

1. That because of the unusual size of some of the 37 pearls involved they were the more difficult to grade as to size and match as to color.

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2. That before importation the said 37 pearls had been carefully selected, graded as to size, and matched as to color, especially for a necklace.

3. That the said aggregation of 37 pearls was of greater value than the total of the separate values thereof.

4. That before importation the said 37 pearls had been actually strung and offered for sale in the form of a necklace.

5. That after importation it was unnecessary to rebore or repolish any of said 37 pearls before making them into a necklace.

6. That after importation the said 37 pearls were sold to one Leeds, in the actual condition imported, as and for a necklace.

Said pearls were therefore dutiable at the rate of 60 per cent ad valorem under the provisions of paragraph 434, as assessed by the collector, and the protest should therefore be overruled.

(T. D. 28247—G. A. 6618.)

Evergreen seedlings.

Plants from 2 feet to 2½ feet high, propagated or raised from the seed of the Indian "deodar" (*Cedrus deodara*), which is a forest cedar native of the Himalayas, are not dutiable as "seedlings of ornamental evergreen trees," or as "nursery stock" at 25 per cent ad valorem under paragraph 252, tariff act of 1897, but as "evergreen seedlings" at $1 per thousand plants and 15 per cent ad valorem, as provided for in the same paragraph.

United States General Appraisers, New York, June 14, 1907.

In the matter of protest 251439 of Howard & Smith against the assessment of duty by the collector of customs at the port of Los Angeles.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* The importation consists of 1,000 evergreen seedlings. The relevant provisions of paragraph 252 of the tariff act of 1897 are as follows:

(1) Evergreen seedlings, one dollar per thousand plants and fifteen per centum ad valorem; (2) stocks, cuttings and *seedlings of all* fruit and *ornamental trees*, deciduous and *evergreen*, shrubs and vines, manetti, multiflora, and brier rose, and all trees, shrubs, plants and vines, commonly known as nursery or greenhouse stock, not specially provided for in this Act, twenty-five per centum ad valorem.

The testimony shows that the plants in question are propagated or raised from the seed of a forest cedar, native of the Himalayas, botanically known as *Cedrus deodara*, which is the Indian "deodar." Those in the importation are from 2 feet to 2½ feet high, and have been transplanted. This fact, however, does not remove them from the class of seedlings. G. A. 5305 (T. D. 24305).

In the opinion of the Board these plants are not "seedlings of ornamental evergreen trees," unless all varieties of pine and fir should be so classified. It is matter of common knowledge that the deodar is a forest tree, and while ornamental in the broad sense that applies to many other forest trees, probably is chiefly valuable for its timber.

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"Deodar," Standard Dictionary, and "cedrus," Paxton's Botanical Dictionary. Unless the earlier provisions for "evergreen seedlings" in paragraph 252 covers such plants, we fail to see what application it can have. There is, moreover, doubt in our mind, in view of the comprehensive nature of the last provision in paragraph 252 and the fact that it is qualified by the words "not specially provided for," whether the term "seedlings" in said provision refers to the evergreen trees therein provided for, as it would have ample scope with reference to the various other trees, plants, etc., mentioned in such provision. G. A. 5645 (T. D. 25211); United States *v.* American Express Company (T. D. 28206).

The Board has also considered whether the last clause of section 7 of the act might not be invoked. It provides:

If two or more rates of duty shall be applicable to any imported article, it shall pay duty at the highest of such rates.

Under this provision the rate of 25 per cent ad valorem assessed by the collector in this case would be higher than the duty of $1 per thousand plants and 15 per cent ad valorem, which the importers claim to be applicable inasmuch as the plants are valued at $102 per thousand. It is evident that if this were made the test evergreen seedlings would be dutiable at the former or the latter rate according as they were valued at more or less than $10 per thousand plants. Under the doctrine of Loggie *v.* United States, decided by the circuit court of appeals for the first circuit (137 Fed. Rep., 813; T. D. 26340), it would be improper to apply section 7 under such circumstances.

We are of the opinion that the plants in question should be classified as evergreen seedlings under the first provision in paragraph 252, and sustain the protest and reverse the collector's decision.

(T. D. 28248—G. A. 6619.)

Mocha sheepskins.

The growth upon mocha sheepskins, classified as wool, class 3, held to be free of duty under paragraph 664, tariff act of 1897.—Goat and Sheepskin Import Company *v.* United States (T. D. 28190; 141 Fed. Rep., 493; T. D. 26404; 145 Fed. Rep., 1022; T. D. 27190) followed.

United States General Appraisers, New York, June 13, 1907.

In the matter of protests 88776 *f*, etc., of the Goat and Sheepskin Import Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise in question consists of mocha sheepskins. The skins were admitted free of duty, but the growth upon said skins was returned by the appraiser as wool, class 3; and the collector assessed duty on the quantity thereof so returned at the rate of 3 cents à pound under the provisions of paragraphs 358 and 360 of the tariff act of 1897. Protestants claim that

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said growth upon the skins in question is entitled to free entry under either paragraph 664, 571, or 562 of said act.

The question here involved was determined by the Board in Abstract 2401 (T. D. 25499), following G. A. 4593 (T. D. 21737), adversely to the importers. Appeals from that ruling were in turn taken to the United States circuit court and the United States circuit court of appeals, and in each of said appeals the decision of the Board was sustained. Goat and Sheepskin Import Company *v.* United States (suit 3641, T. D. 28190; 141 Fed. Rep., 493; T. D. 26404, and 145 Fed. Rep., 1022; T. D. 27190).

The case was then taken on writ of certiorari to the United States Supreme Court, where the issue was finally determined in favor of the importers' contention (T. D. 28190). In the decision for the court, Mr. Justice Peckham writes:

> It may be difficult in some cases to define the line between "wool" and "hair" as a growth upon skins, but we do not regard that difficulty as an argument for the construction contended for by counsel for the Government. That argument leads to the classification of a substance like that in question, as wool, when in fact it bears no resemblance to it, is not used as wool, and has none of its characteristics, and is known commercially as mocha hair, and is so bought and sold over the whole country. The case is one of degree, and because in some few cases the points may closely approach each other and there may be in such cases some difficulty in telling wool from hair, yet that fact furnishes no reason for refusing to adopt the general test which in most cases is easily applied—fitness, identity of use, commercial designation. To adopt the claim of counsel eliminates all inquiry as to whether an article is wool or hair, and leaves simply the question whether it is to be found on what may be called wool-bearing animals or on the alpaca or other like hair-coated animals. Some sheep are wool-bearing animals, therefore the hair on the skin of the mocha sheep is wool and must be classified as such. We do not agree with this claim. If an article does not, to a dealer, look like wool, can not be used as wool, is not commercially known as wool, but, on the contrary, is bought and sold throughout the country as mocha hair, and is so designated commercially by those dealing in it, it ought not to be classified as wool or made to pay duty as such, simply because it grows on a sheep. * * *
>
> The growth, being still on the skin, should have been regarded as part of such skin, and classified under paragraph 664, in the free list, and not as a sheepskin with wool on.

On said authority we sustain the protests and reverse the action of the collector in each case.

(T. D. 28249—G. A. 6620.)

Jurisdiction to review erroneous weights.

1. Duty Assessable on Imported Quantity.

The settled rule of law is that duty should be assessed only on the quantity of imported goods arriving at the port of entry, and not on the quantity appearing on the invoice to have been shipped from the foreign port of exportation.

2. Action of Government Weighers—When Conclusive.

Where imported merchandise is dutiable by weight the action of Government weighers is not subject to review by the Board so long as they act strictly within their statutory authority and proceed on no wrong principle in performing the duty imposed on them by law.

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3. SAME—WHEN NOT CONCLUSIVE.

This principle, however, does not apply where such irregularities occur in the weighing of goods as probably would lead to erroneous results, and in such case the Board will undertake to correct the weights returned by the Government weigher in accordance with the facts as shown by the evidence.

4. ONUS OF PROOF ON IMPORTER.

The onus is on the importer, however, to furnish the Board with evidence satisfactorily showing the weight of imported merchandise when landed at the port of entry.

United States General Appraisers, New York, June 14, 1907.

In the matter of protest 230395 of the American Sugar Refining Company against the assessment of duty by the collector of customs at the port of New Orleans.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

SOMERVILLE, *General Appraiser:* The importation in question consists of 54,150 bags of beet sugar, imported from Germany by the steamer *Montauk Point*, September 3, 1906. The gross weight of the sugar, as returned by the United States weigher, amounted to 12,076,131 pounds; the invoice gross weight is 12,073,670 pounds. The gain of the sugar over the invoice weight apparently appears to be 2,461 pounds. The weight of the sugar as ascertained at the refinery of the American Sugar Refining Company is shown to be 11,944,765 pounds, which shows an apparent loss of 131,366 pounds. The importers contend that there was an error in the Government's weight on the following basis:

	Pounds.	Pounds.
Gross weight returned by the Government		12,076,131
Invoice weight	12,073,670	
Less average loss of .3 per cent	36,221	
True landed weight as claimed		11,937,449
Amount of error claimed in Government's weight		38,682

The settled rule of law is that duty should be assessed only on the quantity of goods arriving at the port of entry, and not on the quantity appearing on the invoice to have been shipped from the foreign port of exportation. Weaver *v.* Salstonstall (38 Fed. Rep., 493); Marriott *v.* Brune (9 How., 619). In other words, duty should be assessed only on the landed weight of the merchandise when dutiable by weight. Franklin Sugar Refining Company *v.* United States (142 Fed. Rep., 376; 73 C. C. A., 476; T. D. 27027). The principle is further settled that the Government weighers of merchandise, having been appointed by law and especially invested with the authority to weigh imported merchandise, that authority is conclusive, and "their action is not subject to review by the Board so long as they act strictly within their authority and proceed upon no wrong principle in performing the duty imposed by law." Yarnell's case, G. A. 3282 (T. D. 16637), and authorities there cited. The principle of this case has been often followed by the Board. *In re* Brown & Co., G. A. 5387 (T. D. 24590).

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The importers admit the principle settled in this case, but seek to show that the weigher in the present instance proceeded on a wrong principle, and that the weighing was done by subordinates and reported on dock books to the weigher; that the scales used in weighing the sugar were thrown out of gear and during part of the time were broken down, and that these facts, together with other irregularities claimed, led to erroneous results.

The testimony taken at the hearing shows that the Government weigher at the port of New Orleans superintended the weighing of this sugar, the weights being taken, however, by his subordinates and reported to him through the dock books used for the purpose. Fairbanks platform scales were used in the weighing. The weigher testified, among other things, that in weighing this particular cargo the scales at one time gave way or broke down, and the effect it had on the weight he was not able to state. It further appears that the sugar was landed and the weights of the cargo were taken on Lafayette street. When asked "Is that an uneven locality?" his answer was "Yes, sir; necessitating putting the scales out on the ground, which is uneven and hard."

Q. What difference would that possibly or probably make in the average weighing of any 1.000 pounds of sugar?—A. That would be a pretty hard matter to say.

Q. You have tested some of those errors?—A. They may vary several pounds, 4, 5, or 6 pounds, depending on the condition.

He further stated that sugar scales were more apt to get out of order, owing to heavy trucks loaded down with 5 bags of beet sugar or 3 bags of Cuban sugar, and more likely to be in need of repairs.

The manager of the American Sugar Refining Company testified that from records made of approximately 600,000 bags of sugar the Government's gross weights have turned out .3 per cent less than the invoice weights, and that the average difference between the Government's gross weights and the refinery's gross weights amounted to about .6 per cent of the invoice weight.

Beet sugar is shown to contain a considerable amount of moisture which naturally dries out and loses weight in the process of transportation before being landed in this country. The witness before named testified in answer to the question, "In your experience has the Government's weight ever before exceeded the invoice weight?" that "We never found a cargo of beet sugar where the Government weight has gone over the invoice weight." In other words, the Government weight invariably is less than the invoice weight. In answer to the question, "Are you able in any way to account for the results of the weighing in this case?" the same witness said:

The only way is that the scales may have been out of gear probably 2 pounds or 4 or 5 pounds, and as this sugar is weighed in drafts of 5 bags each it might account for the loss in weight. We discovered the Government's scales at the time to be out of gear.

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It appears from the evidence that errors have unquestionably been committed in ascertaining the weights of this sugar, and that such errors, prejudicial to the importer, resulted from irregularities in the process of weighing. And we are of opinion that the claim made in the protest should be sustained to the extent of reducing the invoice weight of the sugar three-tenths of 1 per cent, equal to .003. The result of our finding is that the amount of error in the Government's gross weight is 38,682 pounds.

The protest is accordingly sustained by allowing this deduction, which is approximately as near as can be ascertained under the circumstances.

The decision of the collector is reversed, with instructions to reliquidate the entry in accordance with this opinion.

(T. D. 28250—G. A. 6621.)

Appraisement—Notice of advance.

1. NOTICE OF ADVANCE MADE BY APPRAISER.

Notice of advance in value of imported merchandise made by the appraiser must be given to the importer as provided in section 1267 of the Customs Regulations of 1899. If this notice is not given the appraisement is not conclusive against the importer and liquidation thereon is illegal.

2.—SAME—HOW GIVEN.

Notice of advance in the value of imported merchandise made by the appraiser may be served by mail and the depositing of such a notice in a duly franked envelope properly addressed is *prima facie* evidence of its receipt, but this may be overcome by positive testimony that such notice was not received and was not addressed to the residence or place of business of the importer.

United States General Appraisers, New York, June 14, 1907.

In the matter of protest 230467 of Independent Importing Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* In this case the appraiser made certain additions to the invoice value of the merchandise and the collector assessed additional duty. It is claimed in the protest that no notice of this advance was received by the importers. It appears from the papers in the case that the notice of advance was deposited for mailing in a duly franked envelope addressed to the Independent Importing Company, the protestants, at 335 Broadway, New York, the address given in the entry, but that said notice was returned by the post-office authorities marked "Not found;" "Not in directory."

Sigmund Kopstein testified as a witness that he is a member of the firm trading as the Independent Importing Company; that neither he nor his firm ever received any notice of the advance in question; that their place of business was never located at 335 Broadway, and that he never authorized anybody to make an entry or give that number as their place of business.

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Article 1267 of the Customs Regulations of 1899 requires the collector, where there is an advance made by the appraiser upon imported merchandise, to give notice of advance to the importer. The depositing of a notice in the post-office for mailing, properly addressed, is *prima facie* evidence of its receipt, but in this case we not only have the positive testimony of the importer that he did not receive it, that the address to which it was sent is not his residence or place of business, but an indorsement upon the notice returned showing that the notice was not delivered to the importer, thus overcoming the *prima facie* evidence. The importer, therefore, did not have such notice as is required by article 1267 (*supra*), and which is also in our judgment impliedly required by the statute itself. It is clear, therefore, the importer had no notice of the advance. It was hence impossible for him to avail himself of the right of appeal guaranteed him by section 13 of the customs administrative act of 1890. The appraisement was not conclusive upon the importer. Lace House *v.* United States (141 Fed. Rep., 869; T. D. 26970); Hawley's case, G. A. 6465 (T. D. 27671).

The protest is sustained.

(T. D. 28251—G. A. 6622.)

Decorated bottles.

Glass siphon bottles, etched with a representation of a man's head and shoulders, surrounded by a band and advertising inscription, held dutiable at 60 per cent ad valorem under paragraph 100, tariff act of 1897, providing for "glass bottles * * * etched * * * or otherwise ornamented, decorated," etc., rather than at 45 per cent ad valorem under paragraph 112 as "manufactures of glass * * * not specially provided for."

HAY, *G. A.*, dissents.

United States General Appraisers, New York, June 14, 1907.

In the matter of protest 195114 of Koscherak Brothers against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

WAITE, *General Appraiser:* This importation consists of glass siphon bottles on which has been etched a man's head and shoulders surrounded by a band bearing the words "Pure, sparkling, healthful, mineral spring, Milwaukee, Wis.," the whole figure being surmounted by the name of John Graf. The entire etched surface is approximately 4½ inches wide by about 5¾ inches high. The head is done with considerable skill and artistic design.

The goods were assessed for duty under paragraph 100 of the tariff act of 1897, which provides for an *ad valorem* rate of duty of 60 per cent. It is claimed by the importer that it should have been assessed under paragraph 112, which provides for a rate of duty of 45 per cent. The only question to be decided is as to whether the etching

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upon the bottle is sufficiently ornamental or decorative as to take it out of the class of plain glass bottles.

Whether the likeness of the man etched upon the bottle, without the surrounding band, is ornamental, would be a question upon which minds might differ according to their artistic sense, but that it is decorative we think there can be no question. It is certainly more elaborate than would be necessary to indicate the contents of the bottle, or depict an ordinary trade-mark. No general definition can be furnished of what is or what is not decorative or ornamental; each case must depend upon the facts supporting it. We think paragraph 100 was intended to cover such commodities as require considerable labor and skill in their production, underlying which is the important question of the amount of labor required to produce the commodity. We think the bottle in question is decorated within the meaning of paragraph 100 (*supra*). The paragraphs under discussion in this case are as follows:

100. Glass bottles, decanters, or other vessels or articles of glass, cut, engraved, painted, colored, stained, silvered, gilded, etched, frosted, printed in any manner or otherwise ornamented, decorated, or ground (except such grinding as is necessary for fitting stoppers), and any articles of which such glass is the component material of chief value, and porcelain, opal, and other blown glassware; all the foregoing, filled or unfilled, and whether their contents be dutiable or free, sixty per centum ad valorem.

112. Stained or painted glass windows, or parts thereof, and all mirrors, not exceeding in size one hundred and forty-four square inches, with or without frames or cases, and all glass or manufactures of glass or paste, or of which glass or paste is the component material of chief value, not specially provided for in this Act, forty-five per centum ad valorem.

The question here involved was covered, we think, by the decision in the case of Koscherak *v.* United States (98 Fed. Rep., 596). We quote from page 599 of the decision as follows:

The question remains whether the etching in this case has progressed to such extent; in other words, whether the articles may be fairly said to be ornamented or decorated. The testimony as to the understanding of the trade is not helpful. Indeed, it is extremely doubtful whether trade usage, if well settled, would control in a case where Congress has used language so distinctively descriptive. We have here not the phrase "cut bottles, engraved bottles, etched bottles, * * * ornamented or decorated bottles," but "all glass bottles, when cut, engraved," etc. What is to be determined is whether, in the ordinary acceptation of the term, the bottle is in fact ornamented or decorated. With what intent the maker etched it would seem to be immaterial. Each case must be tested by the result accomplished.

This decision was made under the tariff act of August 27, 1894, but the provision in paragraph 90 of that act is practically the same as paragraph 100 of the present act. We also cite Abstract 6308 (T. D. 26338); G. A. 4769 (T. D. 22503); Utard *v.* United States (C. C. A., 128 Fed. Rep., 422; T. D. 25115), affirming the same, and G. A. 5158 (T. D. 23790).

The protest is therefore overruled and the finding and assessment of the collector is affirmed.

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DISSENTING OPINION.

HAY, *General Appraiser:* I do not agree with the conclusion reached by the majority of the Board in this case. I do, however, fully agree with one statement contained in the opinion to the effect that "no general definition can be furnished of what is or what is not decorative or ornamental; each case must depend upon the facts supporting it." This very thought, it seems to me, excludes precedents, and yet the Board, by endeavoring to follow the case of Koscherak *v.* United States (98 Fed. Rep., 596), is gradually extending the list of articles that are to be classified under paragraph 100 until it will eventually include every article of glass except those that are so plain as to be absolutely homely. The etching on the bottle in question is nothing more than a label or an advertisement of what it contains. This to my mind renders it no more "ornamented or decorated" than the same bottle would be with the same inscription and the same figure printed on a label and pasted thereon. I do not believe paragraph 100 was intended to cover articles of this kind.

(T. D. 28252—G. A. 6623.)

Ground carbon.

GROUND GAS RETORT CARBON—NONENUMERATED ARTICLE.

Ground gas retort carbon is dutiable as a nonenumerated manufactured article under the provisions of section 6, tariff act of 1897.

United States General Appraisers, New York, June 14, 1907.

In the matter of protests 224047, etc., of Otto Wehrenberg against the assessment of duty by the collector of customs at the port of New York.

Before Board 3 (WAITE, SOMERVILLE, and HAY, General Appraisers).

HAY, *General Appraiser:* Certain ground carbon, assessed for duty at 35 per cent ad valorem under the provisions of paragraph 97 of the tariff act of 1897, is claimed in these protests to be dutiable as coke under paragraph 415, as waste under paragraph 463, or as a nonenumerated article at 10 or 20 per cent ad valorem under section 6.

No testimony was given in support of the claim that the commodity in question is waste, but the contention that it is dutiable, either directly or by similitude, as coke or as a nonenumerated article is relied upon by the importer.

The Government's representative contends that if by reason of the decision of the Supreme Court in the case of United States *v.* Downing (201 U. S., 354; T. D. 27281) the commodity in question can not be classified directly under paragraph 97, it may be classified under that paragraph by similitude in the application of section 7. In United States *v.* Downing (*supra*) it was held that paragraph 97 embraced in its provisions only such articles as are susceptible of decoration. This being true, it is difficult to see how an article that is not susceptible of decoration can come within the requirements of section 7 and be classified by similitude under paragraph 97. Sahadi's case, Abstract 14496 (T. D. 27937).

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Under the testimony in this case the commodity in question is clearly not dutiable as coke, and the same consideration which removes it from classification directly under the coke paragraph prohibits its classification under that paragraph by similitude. Meadow's case, Abstract 14188 (T. D. 27873).

The rule laid down in United States *v.* Downing (*supra*) has rendered it difficult, if not impossible, to find any paragraph of the law under which this commodity might be classified. We are therefore driven to section 6 as the only provision of the law under which it can be placed. In determining whether, under this paragraph, it should be assessed as a manufactured or an unmanufactured article, it is only necessary to say that were it not ground, and thereby very greatly advanced in value as the testimony shows, it would, following Earle's case, G. A. 5513 (T. D. 24847), be properly classifiable as coke, either directly or by similitude. We therefore reach the conclusion that the commodity in question should be assessed as a nonenumerated manufactured article and a duty of 20 per cent levied thereon.

The protests are sustained and the collector directed to reliquidate the entries in accordance herewith.

(T. D. 28253—G. A. 6624.)

Blue—Bleachers' blue.

Merchandise invoiced as "blue" held to be Prussian blue containing ferrocyanide of iron and dutiable at the rate of 8 cents a pound under the provisions of paragraph 45, tariff act of 1897.—Abstract 740 (T. D. 25110); De Ronde *v.* United States (148 Fed. Rep., 653; T. D. 25464) cited and distinguished.

United States General Appraisers, New York, June 14, 1907.

In the matter of protests 229887, etc., of A. De Ronde & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The issue here is whether certain merchandise invoiced as "blue" is blue containing ferrocyanide of iron subject to duty at the rate of 8 cents per pound under the provisions of paragraph 45 of the tariff act of 1897, or a product or preparation of coal tar, not a color or dye and not medicinal, and subject to duty at 20 per cent ad valorem under the provisions of paragraph 15 of said act. These paragraphs read as follows:

45. Blues, such as Berlin, Prussian, Chinese, and all others, containing ferrocyanide of iron, in pulp, dry or ground in or mixed with oil or water, eight cents per pound.

15. Coal-tar dyes or colors, not specially provided for in this Act, thirty per centum ad valorem; all other products or preparations of coal tar, not colors or dyes and not medicinal, not specially provided for in this Act, twenty per centum ad valorem.

There is undisputed evidence on behalf of protestants that the article involved is similar to that which was the subject of Board's decision, Abstract 740 (T. D. 25110), and later of De Ronde *v.* United States (148 Fed. Rep., 653; T. D. 25464).

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As the case was then presented to the Board, the issue was whether the merchandise was coal-tar color subject to duty at 30 per cent ad valorem, as assessed in that instance by the collector, or dutiable as here claimed. The Board affirmed the collector's assessment, and the court reversed this action, holding that the merchandise was dutiable at the rate of 20 per cent under said paragraph 15. De Ronde case (T. D. 25464), *supra.*

Although the merchandise upon which we are now called upon to pass is the same as that so decided upon, the issue is very different, for as we have noted it has been returned by the appraiser and classified by the collector as "blue containing ferrocyanide of iron" and assessed for duty at the rate of 8 cents per pound.

The mere fact that the appraiser has changed the form of his return and the collector the rate of duty we would not deem sufficient to warrant a review of the case in the face of the court's conclusion, but the evidence before us in this case is altogether different and presents a wholly different issue. In fact, we are satisfied that upon the evidence we are now called to consider the court would have reached an entirely different conclusion.

We have the testimony of four chemists, who substantially agree upon the following facts:

1. The merchandise is not a coal-tar color or dye.
2. It is not a product or preparation of coal tar nor a derivative therefrom.
3. It is a Prussian blue soluble in water.

All Prussian blues are not soluble in water, but in all of them ferrocyanide of iron is the predominating feature and no article which does not contain that substance can be classed as Prussian blue.

On the record we feel constrained to disregard the ruling of the court in the De Ronde case (*supra*), and find the merchandise to be Prussian blue containing ferrocyanide of iron, holding it to be subject to duty as assessed.

The protests are overruled and the decisions of the collector affirmed.

(T. D. 28254—G. A. 6625.)

Manufactures of wax—Beads partly or wholly filled with wax.

1. Strung beads, usually invoiced as wax beads, but sometimes as "beads" or "pearl beads," partly or wholly filled with wax, *Held* to be composed in chief value of wax if valued at more than 25 francs, 22 crowns or 20 marks per gross strings, and to be dutiable at 25 per cent ad valorem under paragraph 448.

2. Strung beads composed of glass or of glass with the interior surface coated with wax, of less value per gross strings than indicated above, are dutiable at 45 per cent ad valorem under paragraph 112, tariff act of 1897.—Abstract 306 (T. D. 25000) cited.

United States General Appraisers, New York, June 14, 1907.

In the matter of protests 112726, etc., of Cohn & Rosenberger *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The protests here in question relate to the classification for duty of beads temporarily strung. On

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the authority of the decision of the Supreme Court, reported in T. D. 28189, we overrule the protests and affirm the collector's decision in assessing duty thereon at the rate of 45 per cent ad valorem under paragraph 112 or 193 on such of the beads as are composed wholly or in chief value of glass or metal.

Regarding the strung beads usually invoiced as wax beads, but sometimes as "beads," and again as "pearl beads," and which the importers claim are dutiable at 25 per cent ad valorem under the provision of paragraph 448 of the present tariff act for manufactures composed in chief value of wax, the Board has made a careful investigation and finds as facts from the evidence presented that wax or pearl beads, so called, are hollow spheres of glass designed to imitate pearls, and imported strung, in five grades, viz:

1. Composed wholly of glass.
2. Coated upon the interior surface with wax blown in the shell.
3. Half filled with wax.
4. Three-fourths filled with wax.
5. Wholly filled with wax.

Referring specifically to the Austrian beads for purposes of illustration, although like conditions prevail as to exportations of similar beads from France and Germany, they are invoiced indiscriminately as "bunches," "mass," and "gross." "Bunches" and "mass" contain 1 dozen strings, while the enumeration "gross" indicates 12 dozen strings. The standard length of each string is 12 inches, the number of beads on each string depending upon the diameter of the beads; consequently the size does not affect the price.

The value of the first class is from 11 to 12 crowns, that of the second class from 18 to 20 crowns, and that of the third 34 crowns, the price named for each description being per gross strings. The beads three-fourths and wholly filled are of much greater value.

It is obvious that if the all-glass beads are worth 11 crowns per gross, those containing a small percentage of wax, valued at 22 crowns per gross, allowing even a small amount for the cost of introducing the wax, must be composed in chief value of glass. It is equally manifest that such as are half filled and valued at more than 34 crowns per gross are composed in chief value of wax; hence we hold that all beads made to imitate pearls, invoiced as "beads," "pearl beads" or "wax beads" valued at more than 25 francs, 22 crowns or 20 marks per gross strings, as the case may be, and marked C & R 2 to 9 or X for identification, are composed in chief value of wax, and as to these the protests are sustained. As to all beads of less value than indicated, glass is chief value, and we affirm the collector's decision in assessing duty thereon at 45 per cent ad valorem under paragraph 112.

In Abstract 306 (T. D. 25000) the Board reached a like conclusion relative to certain wax beads then under consideration.

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(T. D. 28255—G. A. 6626.)

Furniture chiefly of metal.

Articles of household furniture, composed of metal and wood, metal being the component material of chief value thereof, *Held* to be dutiable at the rate of 45 per cent ad valorem under the provisions of paragraph 193, tariff act of 1897.—G. A. 6384 (T. D. 27424), Abstract 12220 (T. D. 27493), and Abstract 15174 (T. D. 28104) cited and followed.

United States General Appraisers, New York, June 17, 1907.

In the matter of protests 199749, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The issue raised by these protests is whether certain articles of household furniture, of which it is conceded in the record metal is the component material of chief value, should have been assessed for duty at the rate of 45 per cent ad valorem under the provisions of paragraph 193, or at either 35 per cent ad valorem under the provisions of paragraph 208, or 20 per cent ad valorem under section 6 of the tariff act of 1897. From the trend of the testimony it is evident that the claim relied upon by protestants is the 35 per cent rate under paragraph 208.

The two paragraphs to be considered read as follows:

193. Articles or wares not specially provided for in this Act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

208. House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this Act, thirty-five per centum ad valorem.

It being conceded by protestants that metal is the component material of chief value, it follows that their contention is that the words "house or cabinet furniture, of wood" in paragraph 208 are sufficiently broad to include such articles of furniture made in part of wood, without regard to whether wood be the component material of chief value. And further, protestants evidently base their claim upon the theory that the words "or of which wood is the component material of chief value" in said paragraph 208 have no relation whatever to the words "house or cabinet furniture, of wood." We do not think that either claim is sound.

It has been repeatedly held by the Board that articles of household furniture were subject to duty according to the component material of chief value, G. A. 6384 (T. D. 27424), Abstract 12220 (T. D. 27493), Abstract 15174 (T. D. 28104), and we think the language of the paragraph in that particular is as comprehensive as

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though it read "house or cabinet furniture of wood, or of which wood is the component material of chief value."

Since the articles in question are not dutiable under the provisions of the wood paragraph, and there being no special provision in the tariff for articles of household furniture made in chief value of metal, the collector was unquestionably regular in classifying them under the catch-all clause in paragraph 193 of the metal schedule.

The protests are overruled and the decision of the collector is affirmed in each case.

(T. D. 28256—G. A. 6627.)

Protests—Sufficiency.

In the determination of the sufficiency or insufficiency of a protest, the same must be considered in connection with the record, and if it can be ascertained from the invoice and protest, when read together, the particulars of the merchandise, paragraph, rate of duty, etc., counted upon by the importer, such a protest is sufficient.

United States General Appraisers, New York, June 18, 1907.

In the matter of protests 211661, etc., of Neuss, Hesslein & Co. against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* In these cases the merchandise was returned by the appraising officer as "manufactures of flax lace and in imitation of lace," and duty was assessed thereon at the rate of 60 per cent ad valorem under the provisions of paragraph 339, tariff act of 1897. The protests make a number of alternative claims, but the only one relied on by the importers is set forth in the following language:

It is claimed that the goods in question are dutiable * * * as follows: At the appropriate rate under paragraph 346 as manufactures of flax, hemp, ramie, or other vegetable fiber, or of which these substances or either of them is the component material of chief value, according to weight and count of threads. * * *

On protest 211661–19713 the collector reports that—

* * * Qualities 395, 400, 485, and 1470 are properly dutiable at 50 per cent under paragraph 346, * * * and that quality 634 is properly dutiable at 35 per cent under the same paragraph.

On protest 226677–22065 he reports that—

* * * the items marked XX on invoice 8337 are properly dutiable at the minimum rate of 50 per cent. * * *

He refuses, however, to reliquidate the entries at these rates, on the ground that the protests are defective in that "though claim is made in the protest under paragraph 346, yet the particular rate applicable is not named."

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The facts as recited, then, present only one question, namely, whether the protests are sufficiently specific, when taken in connection with the entry and invoice, to apprise the collector of the exact claim made by the importers; and this question has been several times decided in favor of the importers.

In the matter of the protests decided in Abstract 14702 (T. D. 28020) the record before us presented precisely the same state of facts as are here set forth—that is to say, although the protests were defective in that they did not specify the particular rate applicable to the goods, there was a detailed description of the merchandise given in the entries and invoices which enabled the exact rate to be fixed. In that decision the Board said:

> The protests are identical in terms with those which were held to be insufficient in G. A. 6549 (T. D. 27943), and the collector's contention that they are defective is undoubtedly sound. There is, however, one circumstance present in the cases before us which differentiates them from those which were the subject of G. A. 6549 (*supra*), and which leads us to the conclusion that these protests should be sustained; and that circumstance is that in the cases at bar there is in the entry a description of the goods as "lithographed prints," with a detailed description of their cutting size and dimensions that brings them within the class provided for in paragraph 400 at 5 cents per pound. As the protests would, beyond cavil, be sufficient if these particulars were mentioned therein, we are of opinion that their presence in the entry or the invoice is sufficient notice to the collector, taken in connection with the protest, of the exact nature of the importer's claim. In other words, the collector has, in the official record before him when the protest is filed, all the necessary data on which to base a reliquidation if, as in the case at bar, it appears that his original classification of the goods has been incorrect.

The principle that the invoice and entry might properly be considered as supplementary to the protests so as to furnish any *details of description* that are lacking therein, received judicial approval as long ago as 1855, when, in the case of Vaccari *v.* Maxwell (3 Blatch., 368; 28 Fed. Cas., 862), Judge Betts said:

> The invoice and entry may, ordinarily, be regarded as connected with and composing a part of the protest, being the things out of which the protest arises, and to which it relates.

And in effect the same thing was said in Thomson *v.* Maxwell (2 Blatch., 385, 393), wherein the court said:

> The protests in this case are written upon the entries, and the two papers being thus before the collector, the plaintiffs are entitled to avail themselves of the descriptions given of the goods in the entries, the same as if those descriptions were repeated in the protests—the protest and the entry composing, in effect, in respect to the notice to the collector, one paper. This point has been repeatedly before this court, and has been uniformly ruled in this way.

In the invoices now before us the statutory particulars as to the weight per square yard, count of threads, etc., are set forth in detail in the invoices, and as the rates at which the goods are said by the collector to be dutiable are the rates at which goods of the character described in the invoices are made dutiable by paragraph 346, it is evident that the invoices give the correct description.

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For the reasons indicated in this opinion we deem the protests sufficient, and the collector is hereby directed to reliquidate the entries in accordance with the reports made by the appraiser as specified in the letters of the collector transmitting the protests.

(T. D. 28257—G. A. 6628.)

Beaded articles—Rice paste curtains.

1. CONSTRUCTION—"PASTE."

The term "paste" appearing in paragraphs 112 and 435, tariff act of 1897, is applicable only to that variety of glass known as paste, and does not include any other of the various dictionary definitions of the word.

2. RICE PASTE CURTAINS.

Curtains made of wood, cotton cord, and rice paste, the latter formed into regularly shaped particles closely resembling small beads in appearance, are dutiable by similitude at 60 per cent ad valorem under paragraph 408, tariff act of 1897.—United States *v.* Popper *et al.* (66 Fed. Rep., 51), G. A. 4189 (T. D. 19495), and G. A. 6150 (T. D. 26707) cited.

United States General Appraisers, New York, June 18, 1907.

In the matter of protests 227272, etc., of Morimura Brothers against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The merchandise in question consists of curtains made of wood, cotton cord, and rice paste. It is stipulated in the record that rice paste is the component material of chief value in the completed articles, which are dealt in under the generic name of rice curtains. Duty was assessed upon these curtains at the rate of 60 per cent ad valorem under paragraph 408 as articles composed wholly or in part of beads made of glass or paste, gelatin, metal, or other material. The importers elect to stand on the claim made in the protest that said merchandise is dutiable at 20 per cent ad valorem under the provision of section 6 of the tariff act of 1897 for articles not enumerated.

The only provision in the act for manufactures of paste is in the schedule dealing with "glass and glassware," and in both the jewelry and glassware schedules the several paragraphs relating to "paste," the latter word is always coupled with glass; hence we have no difficulty in reaching the conclusion that rice dough, although probably paste within the dictionary meaning of the word, is not the substance provided for in paragraph 112, which includes only the variety of glass known as paste. United States *v.* Popper *et al.* (66 Fed. Rep., 51). In consonance with this conclusion we hold the disputed articles are either dutiable at 20 per cent ad valorem, as claimed, under section 6, or at 60 per cent ad valorem, as assessed, either directly or by similitude, under paragraph 408.

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It requires merely an inspection of the exhibits in this case to show that rice curtains bear a very close resemblance to beaded curtains, if indeed they are not such in fact. The same conditions obtain as to numerous other articles, such as glass-bead fan chains, necklaces, ornaments, etc., exact counterparts thereof now being made of rice dough, as may be seen by an inspection of the exhibits *In re* Cattus, protest 250770, decided concurrently with this case. There is some evidence tending to show that the small particles when removed from the strings—which may readily be done without destroying them—would be known as beads; but upon this point commercial designation can not be invoked, the testimony being conflicting.

We are not much impressed with the argument of importers' counsel that beads must be made of some durable substance, nor that the particles if separated from the strings would be discarded as waste. Rice dough, if baked to extreme hardness, is equally as durable as gelatin, which is enumerated among the materials of which beads or spangles are made; nor would any attempt be made to recover glass beads of a similar size to those in question were they to be separated from the string. Unquestionably, both descriptions, if so separated, would be swept out as worthless.

There is much force in the argument of the attorney for the Government that witnesses who do not deal in rice curtains were not qualified to pass upon the commercial description of such articles. We do not, however, feel that it is incumbent upon us to determine whether or not the articles are composed wholly or in part of beads.

Section 7 provides that articles not enumerated in the tariff act, which are similar either in material, quality, texture, or the use to which they may be applied to any article enumerated therein as chargeable with duty, shall pay the same rate of duty which is levied upon the enumerated article which it most resembles in any of the particulars mentioned. Curtains composed in chief value of beads are enumerated as articles composed wholly or in part of beads. Rice curtains are so similar to beaded curtains as to leave a doubt in our mind if they are not such in fact. They take their place among the latter in trade and commerce; and this fact alone, in our opinion, is sufficient to defeat the importers' claim. Even were all of the requirements of material, quality, texture, and intended purpose of use essential, instead of any one, we do not think there is a sufficient difference between beads composed of gelatin or wax and baked rice dough, nor in either of the other respects mentioned, to eliminate them from the similitude provision.

In accordance with the views herein expressed, and following decisions of this Board (see G. A. 6150—T. D. 26707, and G. A. 4189—T. D. 19495), we overrule the protests and affirm the decision of the collector in each case.

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(T. D. 28258.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15695.—CASES CONTAINING NEEDLES AND BODKINS.—Protest 244136 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, May 31, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of Abstract 14504 (T. D. 27937), relating to cases containing needles and bodkins.

No. 15696.—SCAMMONY RESIN.—Protest 247637 of Lehn & Fink, protests 99400*f*, etc., of Parke, Davis & Co. *et al.*, and protests 93936*f*, etc., of Schoellkopf, Hartford & Hanna Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 10, 1907. Opinions by Lunt, G. A.

Protests sustained on the authority of G. A. 6600 (T. D. 28199), relating to scammony resin.

No. 15697.—SERO-VACCIN—MEDICINAL PREPARATION.—Protest 248542 of Thos. Meadows & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 10, 1907. Opinion by Lunt, G. A.

The merchandise related to so-called streptococcic sero-vaccin dry, which the Board found to be used for the prevention and cure of tuberculosis, pneumonia, and tetanus, and held to have been properly classified as a medicinal preparation under paragraph 68, tariff act of 1897. Note Abstract 14828 (T. D. 28036).

No. 15698.—SCAMMONY RESIN.—Protest 51256*b* of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 1, June 10, 1907. Opinion by Lunt, G. A.

The protest related to scammony resin and various other materials. On the authority of G. A. 6600 (T. D. 28199) the protest was sustained as to the resin, but overruled in all other respects for want of evidence.

No. 15699.—PROTESTS INSUFFICIENT.—Protests 122503, etc., of Gustav Martin against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, June 10, 1907. Opinion by Lunt, G. A.

It appeared that the merchandise (scammony resin) had been improperly classified, but as the importers failed to make the correct contention the protests were overruled.

No. 15700.—PROTEST INSUFFICIENT.—Protest 242883 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, June 10, 1907. Opinion by Lunt, G. A.

The Board held the protest insufficient because it failed to set out specifically the number of the paragraph under which the importers' claim was made or the rate of duty applicable.

No. 15701.—LACE PINS.—Protest 223190 of Weiller & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 10, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6376 (T. D. 27390), relating to hat pins.

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No. 15702.—STRUNG BEADS.—Protests 88541*b*–14029, etc., of G. W. Sheldon & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, June 10, 1907. Opinion by Sharretts, G. A.

On the authority of Frankenberg Company *v.* United States (T. D. 28189) the Board overruled the importers' contentions that beads temporarily strung are dutiable under paragraph 408, tariff act of 1897, relating to beads not threaded or strung.

No. 15703.—PINS—ORNAMENTS.—Protests 46839 *b*, etc., of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 1, June 10, 1907. Opinion by Sharretts, G. A.

Pins and ornaments classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of the component material of chief value. This contention was sustained as to certain ornaments, but in other respects was overruled.

No. 15704.—FLORAL WATERS.—Protest 244202 of Magnus & Lauer against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 10, 1907. Opinion by McClelland, G. A.

The protest related to floral waters, which the Board held dutiable under section 6, tariff act of 1897, relating to unenumerated manufactured articles, as claimed by the importers.

No. 15705.—SILK TRIMMINGS—SILK FABRICS.—Protest 244987 of Scruggs, Vandervoort-Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 10, 1907. Opinion by Howell, G. A.

The goods were held to have been properly classified under paragraphs 387 and 390, tariff act of 1897, relating respectively to silk fabrics and silk trimmings.

No. 15706.—FEATHERSTITCH BRAIDS.—Protests 247713, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 10, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456).

No. 15707.—JUTE FABRICS.—Protest 247642 of D. W. MacLeod & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 10, 1907. Opinion by De Vries, G. A.

The protest related to fabrics exceeding 16 inches in width, which the Board held to have been properly classified under paragraph 347, tariff act of 1897, relating to manufactures of vegetable fiber (jute).

No. 15708.—SUGAR—COUNTERVAILING DUTY.—Protests 69989*f*, etc., of the American Sugar Refining Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of Franklin Sugar Refining Company *v.* United States (142 Fed. Rep., 876; T. D. 27027), holding that countervailing duty should be assessed on the basis of the weight imported rather than that shipped.

No. 15709.—GAUGE OF OLIVE OIL.—Protest 238499 of Lgi. Balbi & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

Protest sustained to the extent authorized by G. A. 6575 (T. D. 28072), relating to the gauge of olive oil in tins.

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No. 15710.—GAUGE OF OLIVE OIL.—Protests 189113, etc., of American Express Company *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15709 (*supra*).

No. 15711.—GAUGE OF OLIVE OIL.—Protests 220909, etc., of Sucrs. de Mayo Hnos. & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 15709 (*supra*).

No. 15712.—TEA COVERINGS—SILK AND PAPER BOXES.—Protest 230443 of Hing Lum Chan against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

Boxes made of paper and cheap silk, each containing a small canister made of tin foil and containing tea, were held free of duty as usual coverings for tea, as claimed by the importer.

No. 15713.—WASTE BAGGING.—Protests 156697, etc., of Train-Smith Company *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

G. A. 6603 (T. D. 28202) followed, relating to waste bagging.

No. 15714.—SHORTAGE.—Protest 231676 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

The importers contended that there was a shortage of four dozen leather purses. Protest overruled.

No. 15715.—CLERICAL ERROR.—Protest 247203 of Rosenthal-Sloan Millinery Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 10, 1907. Opinion by Somerville, G. A.

The importers sought relief from penal duties arising from undervaluation asserted to be due to clerical error in making out the invoice. Assessment affirmed.

No. 15716.—POST CARDS—WEIGHT.—Protest 234747 of A. Stroefer against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 10, 1907. Opinion by Hay, G. A.

The question was whether post cards dutiable by weight should have been assessed on the basis of German pounds as adopted by the collector, or American pounds as claimed by the importer. Assessment affirmed.

No. 15717.—PROTESTS ABANDONED.—Protests 243782, etc., of Mills & Gibb *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 10, 1907. Opinion by Fischer, G. A.

Protests abandoned.

No. 15718.—PROTESTS ABANDONED.—Protests 194566, etc., of A. Steinhardt & Bro. *et al.*

Same as No. 15717 (*supra*).

No. 15719.—PROTESTS ABANDONED.—Protests 231930, etc., of Baum, Linz & Cohen *et al.* Opinion by Howell, G. A.

Same as No. 15717 (*supra*).

No. 15720.—PROTESTS UNSUPPORTED.—Protests 244878, etc., of L. P. Rose & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 10, 1907. Opinion by McClelland, G. A.

Protests overruled for want of merit.

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No. 15721.—PROTEST UNSUPPORTED.—Protest 242879 of F. Coppolino against the assessment of duty by the surveyor of customs at the port of St. Louis. Opinion by Lunt, G. A.

Same as No. 15720 (*supra*).

No. 15722.—PROTEST UNSUPPORTED.—Protest 246776 of Schoellkopf & Co against the assessment of duty by the collector of customs at the port of Buffalo. Opinion by Lunt, G. A.

Same as No. 15720 (*supra*).

No. 15723.—PROTESTS UNSUPPORTED.—Protests 230622 of Knauth, Nachod & Kühne. Before Board 3. Opinion by Somerville, G. A.

Same as No. 15720 (*supra*).

No. 15724.—STRUNG BEADS—FOIL BACK JEWELS.—Protests 3151 *h*, etc., of H. E. Frankenberg Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 11, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, foil back jewels were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897, on the authority of G. A. 6380 (T. D. 27420), and beads temporarily strung were held dutiable as manufactures of the component material of chief value on the authority of Frankenberg Company *v.* United States (T. D. 28189). In all other respects the protests were overruled.

No. 15725.—CRUDE FEATHERS.—Protest 249194 of Zucker & Josephy against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 11, 1907. Opinion by McClelland, G. A.

As claimed by the importers, the merchandise was held dutiable under paragraph 425, tariff act of 1897, as crude feathers. G. A. 6513 (T. D. 27821) noted.

No. 15726.—BALATA.—Protests 244534, etc., of Geo. A. Alden & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 11, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of Earle *v.* United States (T. D. 27977), relating to balata.

No. 15727.—PROTESTS ABANDONED.—Protests 242419, etc., of Max Mayer & Co. *et al.* Before Board 1, June 11, 1907. Opinion by McClelland, G. A.

Same as No. 15717 (*supra*).

No. 15728.—PROTESTS ABANDONED.—Protests 242299, etc., of P. Pastene & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, June 11, 1907. Opinion by McClelland, G. A.

Same as No. 15717 (*supra*).

No. 15729.—PROTESTS ABANDONED.—Protests 242982, etc., of T. M. Duche & Sons *et al.* Before Board 3, June 11, 1907.

Same as No. 15717 (*supra*).

No. 15730.—PROTESTS ABANDONED.—Protests 88130*f*, etc., of Gullabi Gulbenkian & Co. *et al.* Before Board 3, June 11, 1907.

Same as No. 15717 (*supra*).

No. 15731.—PROTEST ABANDONED.—Protest 182442 of Park & Tilford. Before Board 3, June 11, 1907.

Same as No. 15717 (*supra*).

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No. 15732.—PROTESTS ABANDONED.—Protests 238541, etc., of E. La Montagne & Sons *et al.* Before Board 3, June 11, 1907. Opinion by Somerville, G. A.

Same as No. 15717 (*supra*).

No. 15733.—CORAL—PRECIOUS STONES.—Protest 248540 of J. Mamluck & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 13, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6482 (T. D. 27720), relating to coral for jewelry settings.

No. 15734.—PINS.—Protests 248146, etc., of Mills & Gibb against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 13, 1907. Opinion by Sharretts, G. A.

Pins classified as jewelry under paragraph 434, tariff act of 1897, were claimed to be dutiable as manufactures of the component material of chief value. This contention was sustained as to a portion of the goods on the authority of G. A. 6376 (T. D. 27890).

No. 15735.—RECONSTRUCTED RUBIES—STRUNG BEADS.—Protest 191849 of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 13, 1907. Opinion by Sharretts, G. A.

G. A. 6336 (T. D. 27278) and Frankenberg Company *v.* United States (T. D. 28189) followed, relating respectively to reconstructed rubies and strung beads.

No. 15736.—STRUNG BEADS.—Protests 157334, etc., of Cohn & Rosenberger, protests 113080, etc., of H. B. Claflin Company *et al.*, and protests 33101*f*, etc., of H. Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 13, 1907. Opinions by Sharretts, G. A.

Protests overruled on the authority of Frankenberg & Co. *v.* United States (T. D. 23189), relating to strung beads.

No. 15737.—STRUNG BEADS.—Protests 101933–17988, etc., of T. Buettner & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15736 (*supra*).

No. 15738.—CRUDE FEATHERS.—Protests 247957, etc., of Guerin & Lavanoux *et al.* June 13, 1907.

Same as No. 15725 (*supra*).

No. 15739.—FEATHERSTITCH BRAIDS.—Protests 179210, etc., of Dieckerhoff, Raffloer & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 13, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Vom Baur *v.* United States (141 Fed. Rep., 439; T. D. 26456), relating to featherstitch braids.

No. 15740.—PROTESTS AGAINST RELIQUIDATION UNDER A COURT DECISION.—Protests 249475, etc., of W. B. Quaintance against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 13, 1907. Opinion by De Vries, G. A.

These protests were against a reliquidation in pursuance of an order of the circuit court. The Board held that the importers were without remedy, and that if dissatisfied with the court's decision should have appealed to the circuit court of appeals.

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No. 15741.—REGALIA.—Protest 242502 of T. B. Schlotmann against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 13, 1907. Opinion by Somerville, G. A.

The protest related to articles sewed on the robes of a priest and worn by him during the public service of the church, which, as claimed by the importer, were held free of duty under paragraph 649, tariff act of 1897, as regalia.

No. 15742.—PROTESTS UNSUPPORTED.—Protests 221227, etc., of Maltus & Ware and protest 247687 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 13, 1907. Opinions by Somerville, G. A.

Protests overruled for want of merit.

No. 15743.—PROTEST UNSUPPORTED.—Protest 244309 of Guernsey & Murray against the assessment of duty by the surveyor of customs at the port of Kansas City.

Same as No. 15742 (*supra*).

No. 15744.—PROTESTS UNSUPPORTED.—Protests 165629, etc., of R. H. Macy & Co. *et al.* and protests 230271, etc., of Freund, Foise & Co. Before Board 2. Opinions by De Vries, G. A.

Same as No. 15742 (*supra*).

No. 15745.—PROTESTS UNSUPPORTED.—Protests 247410, etc., of Hensel, Bruckmann & Lorbacher. Before Board 2. Opinion by Howell, G. A.

Same as No. 15742 (*supra*).

No. 15746.—PROTEST UNSUPPORTED.—Protest 247903 of Kaufman-Straus Company against the assessment of duty by the surveyor of customs at the port of Louisville, Ky. Before Board 2. Opinion by Howell, G. A.

Same as No. 15742 (*supra*).

No. 15747.—SHORTAGE OF MOLASSES.—Protest 243337 of J. J. Buchey & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

The question was whether the dutiable amount of molasses was 775,000 gallons as assessed, or 761,345 as claimed by the importers. Protests sustained.

No. 15748.—LEAF TOBACCO.—Protest 248226 of Y. Pendas & Alvarez against the assessment of duty by the collector of customs at the port of Tampa. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

Bale 497, classified as wrapper tobacco, was found to contain 70 per cent of filler Classification modified accordingly.

No. 15749.—LEAF TOBACCO.—Protest 248007 of Mendelsohn, Bornemann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

The Board found the percentages of filler tobacco to be as follows, modifying the assessment accordingly: Bale 10001, 90 per cent; 10002, 88 per cent, and 10003, 106 per cent.

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No. 15750.—Wool Powder Puffs.—Protests 176573, etc., of F. R. Arnold & Co. *et al.*, protests 192303, etc., of Geo. E. Evans, and protests 181065, etc., of Marcel Schmitt *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinions by Lunt, G. A.

Protests overruled on the authority of G. A. 6611 (T. D. 28222), relating to wool powder puffs.

No. 15751.—Wool Powder Puffs.—Protest 188448 of Callender, McAuslan & Troup Company against the assessment of duty by the collector of customs at the port of Providence.

Same as No. 15750 (*supra*).

No. 15752.—Wool Powder Puffs.—Protest 211355 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15750 (*supra*).

No. 15753.—Wool Powder Puffs.—Protest 210425 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15750 (*supra*).

No. 15754.—Wool Linings.—Protest 250051 of Rothfeld, Stern & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

The merchandise consisted of wool linings claimed by the importers to be classifiable under the provision in paragraph 368, tariff act of 1897, for such goods valued at less than 70 cents per pound. Protests sustained as to one piece.

No. 15755.—Scammony Resin—Crude Drugs.—Protests 78919*f*, etc., of Parke, Davis & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

As claimed by the importers, the Board held that scammony resin was dutiable as a drug advanced in value under paragraph 20, tariff act of 1897, on the authority of G. A. 6600 (T. D. 28199) and that orris root and soap bark and century herb were free of duty under paragraph 548 as crude drugs. Note G. A. 4172 (T. D. 19455), G. A. 5065*b* (T. D. 23473*b*), and G. A. 4952 (T. D. 23142).

No. 15756.—Powder Puffs—Celluloid Toys.—Protest 231171 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

The Board sustained the importers' contention that celluloid balls were dutiable as toys under paragraph 418, tariff act of 1897, but held powder puffs to be dutiable as manufactures of wool under paragraph 356.

No. 15757.—Wool Powder Puffs—Cotton Lace—Dolls' Wigs.—Protests 125396, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 1, June 14, 1907. Opinion by Lunt, G. A.

The Board held the merchandise to have been properly classified, as follows: Powder puffs as manufactures of wool under paragraph 366, tariff act of 1897; cotton lace under paragraph 339, and dolls' wigs under said paragraph 366. Note G. A. 6611 (T. D. 28222).

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No. 15758.—Belt Buckles.—Protests 248124, etc., of P. W. Lambert & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Sharretts, G. A.

The protests were sustained, so far as they related to belt buckles, on the authority of G. A. 6374 (T. D. 27382).

No. 15759.—Toilet Sets for Babies—Entireties.—Protest 234694 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Sharretts, G. A.

The protests related to toilet sets for babies, consisting of small combs, boxes, rattles, brushes, powder puffs, teething rings, and ear sponges, composed of celluloid or bone with other materials. Each set is contained in an elaborate paper box divided into compartments adapted to each of the various articles composing the set. As claimed by the importers, the Board held that the articles should have been classified as entireties, and found that in items 172 and 186 the paper boxes constituted the component material of chief value, and that in item 171 the bone was the chief component. These items were therefore held dutiable as manufactures in chief value of paper and of bone, respectively, under paragraphs 407 and 449, tariff act of 1897.

No. 15760.—Celluloid Toys.—Protest 247589 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of Abstract 12792 (T. D. 27602), relating to celluloid toys.

No. 15761.—Strung Beads.—Protests 153805, etc., of S. A. Frost's Son *et al.* and protests 123899, etc., of M. Gugenheim *et al.* against the assessment of duty by the collector of customs at the port of New York. June 14, 1907.

No. 15702 (*supra*) followed, relating to strung beads.

No. 15762.—Imitation Pearls—Goldstones—Strung Beads.—Protests 130429, etc., of Albert Lorsch & Co. *et al.* and protest 1331 *h* of Samuel Schiff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinions by Sharretts, G. A.

Imitation pearls and goldstones were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897, as claimed by the importers. Beads temporarily strung were held to have been properly classified as manufactures of the component material of chief value.

No. 15763.—Mocha Sheepskins.—Protests 170692, etc., of John Dunn, jr., *et al.* against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 1, June 14, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of Goat and Sheepskin Import Company *v.* United States (T. D. 28190), relating to mocha sheepskins.

No. 15764.—Metal-Thread Goods.—Protest 244988 of Scruggs, Vandervoort & Barney Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

The articles in controversy were held to have been properly classified under paragraph 179, tariff act of 1897, as composed in chief value of metal thread.

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No. 15765.—Pictorial Post Cards.—Protests 247102, etc., of Morris European and American Express Company (Limited) against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

Pictorial post cards were held to have been properly classified as printed matter under paragraph 403, tariff act of 1897.

No. 15766.—Pictorial Post Cards.—Protests 246859, etc., of Richard Freund *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

The protests related to pictorial post cards, classified as printed matter under paragraph 403, tariff act of 1897, and claimed to be dutiable as lithographic prints under paragraph 400. Protests sustained as to certain items. Note G. A. 6369 (T. D. 27359), relating to pictorial post cards.

No. 15767.—Pictorial Post Cards.—Protest 244129 of A. Selige Publishing Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15766 (*supra*).

No. 15768.—Post-Card Albums.—Protests 242086–24193, etc., of A. C. McClurg & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, June 14, 1907.

Post-card albums classified as scrap albums under paragraph 404, tariff act of 1897, were claimed to be dutiable as blank books under paragraph 403. Protests overruled.

Fischer, *General Appraiser:* * * * The question of the classification of post-card albums was decided against the contention of the importers in G. A. 5952 (T. D. 26099), which was affirmed by the circuit court in 142 Federal Reporter, 786 (T. D. 27029), and by the circuit court of appeals in 148 Federal Reporter, 1017, and 149 Federal Reporter, 1022 (T. D. 27722). The importers petitioned for a writ of certiorari, and the same has been denied by the Supreme Court (T. D. 28210).

No. 15769.—Post-Card Albums.—Protests 223443, etc., of Moses Norris *et al.* against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

Same as No. 15768 (*supra*).

No. 15770.—Hand Sewing Needles.—Protest 244555 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of Abstract 13597 (T. D. 27734), relating to hand sewing needles.

No. 15771.—Silk Belts—Beltings—Webbings.—Protests 177037, etc., of A. Steinhardt & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by Fischer, G. A.

The articles were held to have been properly classified under paragraph 389, tariff act of 1897, relating to silk belts, beltings, and webbings.

No. 15772.—Crocheted Articles.—Protest 244379 of Rosenthal & Grotta against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by Howell, G. A.

Protests sustained on the authority of Loewenthal *v.* United States (147 Fed. Rep., 774; T. D. 27091), relating to crocheted articles. Note G. A. 6320 (T. D. 27221).

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No. 15773.—BABY'S TOILETS—PINCUSHIONS.—Protest 232299 of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

The importers contended that baby's toilets and pincushions were dutiable as toys under paragraph 418, tariff act of 1897. Protest overruled on authority of Abstract 10695 (T. D. 27259). Note, also, Abstract 5433 (T. D. 26218) and Abstract 6010 (T. D. 26289).

No. 15774.—PROTESTS AGAINST RELIQUIDATION.—Protests 162721, etc., of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

The protests were against a reliquidation in accordance with a former decision of the Board and were overruled.

No. 15775.—FLAX NOILS.—Protest 247611 of Hughes Fawcett against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

Protest sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 15776.—EMBROIDERED ARTICLES.—Protest 244712 of M. Ally against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly classified under paragraph 339, tariff act of 1897, relating to embroidered articles.

No. 15777.—EMBROIDERED SCREENS.—Protest 243982 of J. V. A. Cattus against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

Embroidered screens were held to have been properly classified under paragraph 339, tariff act of 1897, relating to embroideries.

No. 15778.—COTTON PINCUSHIONS.—Protest 199810 of Samstag & Hilder Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

The protest related to cotton pincushions, claimed to be dutiable as toys under paragraph 418, tariff act of 1897. Assessment affirmed.

No. 15779.—PROTESTS AGAINST RELIQUIDATION.—Protests 152416, etc., of Hunter & Witcombe *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same as No. 15774 (*supra*).

No. 15780.—FIGURED COTTON CLOTH.—Protests 25646*h*, etc., of F. B. Vandegrift & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly classified under paragraph 313, tariff act of 1897, as figured cotton cloth.

No. 15781.—WAFERS.—Protest 247234 of L. P. Seibold against the assessment of duty by the collector of customs at the port of Washington. Before Board 3, June 14, 1907. Opinion by Waite, G. A.

United States *v.* Meadows (T. D. 28004) followed, relating to wafers.

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No. 15782.—WAFERS.—Protest 220272 of S. S. Allen Grocery Company against the assessment of duty by the surveyor of customs at the port of St. Joseph.

Same as No. 15781 (*supra*).

No. 15783.—WAFERS.—Protest 199618 of E. M. Ward against the assessment of duty by the collector of customs at the port of Port Townsend.

Same as No. 15781 (*supra*).

No. 15784.—WAFERS.—Protests 175538, etc., of I. McNiven *et al.* against the assessment of duty by the collector of customs at the port of Niagara Falls.

Same as No. 15781 (*supra*).

No. 15785.—WAFERS.—Protests 183543, etc., of Luina Hermanos *et al.* against the assessment of duty by the collector of customs at the port of San Juan.

Same as No. 15781 (*supra*).

No. 15786.—WAFERS.—Protests 125691, etc., of Jas. A. Hayes & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15781 (*supra*).

No. 15787.—WAFERS.—Protests 145980, etc., of Geo. C. Shaw Company against the assessment of duty by the collector of customs at the port of Portland, Me.

Same as No. 15781 (*supra*).

No. 15788.—WAFERS.—Protests 161584, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 15781 (*supra*).

No. 15789.—WAFERS.—Protests 196087, etc., of F. H. Leggett & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same as No. 15781 (*supra*).

No. 15790.—SLICED MUSHROOMS.—Protests 182056, etc., of Chas. F. Meyer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 14, 1907. Opinion by Waite, G. A.

Zanmati *v.* United States (T. D. 28054) followed, relating to mushrooms sliced and dried.

No. 15791.—RAGS.—Protests 243710, etc., of Charles H. Wood against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 6562 (T. D. 28031), relating to rags.

No. 15792.—WHITE RUBBER WASTE.—Protest 243294 of Davies, Turner & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

The merchandise invoiced as white rubber waste, which was classified as waste under paragraph 463, tariff act of 1897, was claimed to be free of duty under paragraph 579, relating to refuse rubber worn out by use and fit only for remanufacture. Protest overruled. Note Abstract 10102 (T. D. 27132), Abstract 13298 (T. D. 27685), and Abstract 13334 (T. D. 27691).

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TREASURY DEPARTMENT, *June 19, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 28259.)

Silk-cotton ribbons.

GARTNER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 31, 1907. Suit 4457.

SILK-COTTON RIBBONS—"OTHERWISE."

In paragraph 320, tariff act of 1897, relating to "ribbons * * * of cotton, * * * whether composed in part of india rubber or otherwise," the word "otherwise" is used in the sense of "not," rather than "of other materials," and ribbons in chief value of silk and in part of cotton are not included therein.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 12372 (T. D. 27545), affirmed the assessment of duty by the collector of customs at the port of New York on importations by Gartner, Sons & Co. The Board's opinion reads as follows:

FISCHER, *General Appraiser:* The merchandise consists of silk and cotton ribbons, returned by the appraising officer as composed in chief value of silk, upon which duty was assessed at the rate of 50 per cent ad valorem under the provisions of paragraph 391 of the tariff act of 1897 as manufactures of silk. It is claimed that the goods are "dutiable directly, or by similitude, or according to the component material of chief value thereof, at 45 per cent ad valorem under paragraph 320 of the tariff act of July 24, 1897."

Paragraph 320 reads in part as follows:

"320. Bandings, * * * ribbons, * * * made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, * * * forty-five per centum ad valorem."

Undoubtedly the meaning of the phrase "whether composed in part of india rubber or otherwise" would be as well expressed if the word "not" were substituted for the word "otherwise." This being so, the only question is as to which is chief value, the cotton or the silk; and notwithstanding that this is the only point at issue, no evidence whatever has been offered by the importers in support of their claim, and at the hearing importers' counsel did not ask his witnesses a single question as to the value of the component materials. On the other hand, an analysis made by the Government analyst at New York, while it confirms the quantitative analysis offered by the importers showing that the proportion in weight of the silk and cotton is 84 per cent and 16 per cent, respectively, proves conclusively that the silk represents 79.48 per cent and the cotton 20.52 per cent of the value of the ribbons. This is decisive against the contention set up in the protests, which are hereby overruled with an affirmance of the collector's decision in each case.

Hatch & Clute (*Walter F. Welch* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

MARTIN, *District Judge*: The merchandise in question consists of silk and cotton ribbons, the proportion in value being silk 79.48 per cent, cotton 20.52 per cent. The appraising officer assessed it at 50 per cent ad valorem under the provisions of paragraph 391 of the tariff act of 1897, as manufactures of silk, which paragraph provides:

All manufactures of silk, of which silk is the component material of chief value, * * * not specially provided for in this Act, * * * fifty per centum ad valorem.

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It is claimed by the importer that the duty should have been assessed at 45 per cent ad valorem under paragraph 320 of said tariff act, which paragraph provides that—

Bandings, * * * ribbons, * * * made of cotton or other vegetable fiber, whether composed in part of india rubber or otherwise, * * * forty-five per centum ad valorem.

There is no question but what these fabrics are covered by paragraph 391, but it is claimed by the importer that the words of said paragraph "not specially provided for in this Act," apply to this case; that these goods are specially provided for in paragraph 320, as they are ribbons in which there is cotton and the words "or otherwise" may include silk. If this be tenable, the words "or otherwise" would include anything else if the article was a banding, belting, binding, ribbon, or any other thing named in said section 320 and made in part of cotton.

It will be observed that paragraph 320 forms a part of Schedule I, entitled "Cotton manufactures." It relates solely to cotton and other vegetable goods. Paragraphs 302 to 325, inclusive, relate to that class of goods, while paragraph 391 forms a part of Schedule L, which is entitled "Silk and silk goods." Paragraphs 384 to 392, inclusive, relate to the importation of articles in which there is silk. The words "or otherwise" as used in paragraph 320 relate back to the words "made of cotton or other vegetable fiber." I concur with the Board of General Appraisers that, as therein used, the words "or otherwise" amount to the word "not." It is evident that Congress intended by the use of the words "or otherwise" in paragraph 320 to refer to articles composed of those materials that are covered by Schedule I, but not to include materials covered by Schedule L. The fair meaning is that the enumerated articles shall be dutiable at a certain rate *if made of cotton or other vegetable fiber*, whether composed in part of india rubber or not. If the words "or otherwise" can include enumerated articles, although made of silk or silk in part, a mistake was made by Congress in placing this provision in the cotton schedule and introducing therein the words "cotton and other vegetable fiber." It is evident that such was not the intention of Congress. The special exception respecting articles composed in part of india rubber is found in several paragraphs, and in some is followed by the words "or otherwise." See paragraphs 371 and 389. There is also a special exception of goods made in part of india rubber in paragraphs 314, 390, and 391; and in each of these exceptions as to goods made in part of india rubber a reference to other material of which said goods are composed, however stated, must be construed in connection with what Congress was dealing with in that schedule.

The decision of the Board of General Appraisers is affirmed.

(T. D. 28260.)

Feather boas.

LEGG *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. June 11, 1907. Suit 4648.

FEATHER BOAS—DRESSED FEATHERS—UNENUMERATED ARTICLES.

Feather boas made by stringing dressed feathers upon a cotton cord are dutiable under paragraph 425, tariff act of 1897, at the rate applicable to feathers dressed or otherwise advanced, by virtue of the provision in section 7 relative to unenumerated articles manufactured of two or more materials.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6467 (T. D. 27673), affirming the assessment of duty by the collector of customs at the port of New York on merchandise imported by George Legg.

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Kammerlohr & Duffy (*Joseph G. Kammerlohr* of counsel), for the importer.

J. Osgood Nichols, assistant United States attorney, for the United States.

MARTIN, *District Judge:* This is an appeal by importers from the Board of United States General Appraisers sitting at the port of New York.

The evidence shows that the imported articles are feather boas. The duty was assessed by the collector at 50 per cent ad valorem under paragraph 425 of the tariff act of 1897. The appraiser returned these articles for duty as "ornamental feathers, manufactured."

The evidence shows, and I find the fact to be, that the boas in question are articles of wearing apparel made by stringing dressed feathers upon a cotton cord. The cord is of but little value, the chief value being feathers. If the feathers used in these articles were imported without being strung together they would be classified as feathers dressed or otherwise advanced, and would be dutiable under said paragraph 425. Feather boas are articles not enumerated. They are manufactured of two materials, as before stated. The last clause of section 7 of said act provides:

On articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value.

The fact is the component material thereof of chief value is feathers, and if the importation was composed wholly of feathers the duty on such feathers would be 50 per cent ad valorem; therefore an article thus composed should be assessed the same as dressed feathers at 50 per cent ad valorem.

The decision of the Board of General Appraisers is affirmed.

NOTE.—An appeal will be taken herein to the circuit court of appeals, second circuit.

(T. D. 28261.)

Metal figures.

SAMSTAG *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. June 11, 1907. Suit 4394.

METAL FIGURES—NOVELTIES—TOYS.

Metal figures of horses, deer, etc., single and in groups, which are known in trade as "metal novelties," and are generally used as mantel or cabinet ornaments rather than by children as toys, *Held* not to be dutiable under the provision for "toys" in paragraph 418, tariff act of 1897.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

The decision below, which is reported as Abstract 12484 (T. D. 27550), affirmed the assessment of duty by the collector of customs at the port of New York on importations by Samstag & Hilder Brothers Company. The opinion filed by the Board reads as follows:

FISCHER, *General Appraiser:* The merchandise consists of metal figures in the form of horses, dogs, deer, etc., singly and in groups, such as are usually seen in use as mantel and cabinet ornaments. Duty was assessed thereon at the rate of 45 per cent ad valorem under the provisions of paragraph 193 of the tariff act of 1897 as articles of metal not specially provided for, and they are claimed to be dutiable properly as toys at 35 per cent under paragraph 418.

The testimony at the hearing was confined to proving the samples which were admitted in evidence. These comprised a deer, a group of two deer, a group of two horses, two groups of two dogs each, a dog, and a goat. It is manifest from an examination of the samples that the goods are wholly unsuitable for the amusement of children, and are not such articles as would be given to them to play with, but, on the contrary, are of the class of goods that are used to decorate mantels and cabinets. No evidence was offered to show that they are known commonly or commercially as toys, or are used as such. At the hearing counsel for the importers stated that they confined their claim to the goods invoiced at 54 marks or 66 crowns per gross, or less, but

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in goods of this character the price is absolutely no criterion by which to judge their classification for duty. That must depend upon their character and use. We think the assessment of duty complained of is correct and is in accordance with the past decisions of the Board. G. A. 3422 (T. D. 16994) and others.

The protests are overruled and the decision of the collector affirmed in each case.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importers.

D. Frank Lloyd, assistant United States attorney, for the United States.

MARTIN, *District Judge:* This is an appeal by importers from the Board of United States General Appraisers, sitting at the port of New York.

The merchandise consists of metal figures in the form of horses, deer, etc., singly and in groups. The collector assessed duty thereon at the rate of 45 per cent ad valorem under the provisions of paragraph 193 of the tariff act of 1897 as articles of metal not specially provided for. The petitioners claim that they are dutiable as toys at 35 per cent under paragraph 418.

Considerable testimony has been taken since the Board of General Appraisers passed upon the case. I find from all the evidence submitted that the articles in question are generally known in trade as "metal novelties" and generally used as mantel or cabinet ornaments. They are not designed for or in general use by children as toys and are not within the provisions of paragraph 418, and therefore not specially provided for; and being composed of metal, they come within the provisions of paragraph 193.

The decision of the Board of General Appraisers is affirmed.

(T. D. 28262.)

Protest.

LEERBURGER *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. June 11, 1907. Suit 4133.

1. PROTEST—SUFFICIENCY—REFERENCE TO WRONG RATE AND WRONG SUBDIVISION OF PARAGRAPH.

   Silk goods which should have been classified under the first subdivision of paragraph 387, tariff act of 1897, as "in the gum," at the rate of 50 cents per pound, were asserted in the importer's protest to be classifiable as "dyed," "at sixty cents per pound," which was in accord with the terms of the second subdivision. *Held* that the protest was a sufficient reference to the provision for goods in the gum.

2. SAME—REFERENCE TO WRONG PARAGRAPH.

   Goods dutiable under paragraph 387, tariff act of 1897, were asserted in the importer's protest to be dutiable under paragraph 388. *Held* that as the language of the protest indicated an intention by the importer to cite paragraph 387, the protest should be construed as referring to that paragraph.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 8323 (T. D. 26753), overruled for insufficiency the protest of George Leerburger against the assessment of duty by the collector of customs at the port of New York. The Board's opinion reads as follows:

HOWELL, *General Appraiser:* The merchandise consists of certain woven fabrics in the piece, which were returned by the appraiser as "manufactures of cotton and silk, cotton chief value." Duty was assessed thereon by the collector at the rate of 8 cents per square yard and 30 per cent ad valorem under the provisions of paragraph 311 of the act of July 24, 1897.

It appears from the testimony and the record, and we find, that the fabrics were imported in the gray, and that they weighed between 1⅛ and 8 ounces per square yard, and contained under 20 per cent in weight of silk.

On the hearing of the case the importer testified that the fabrics were the same as a portion of the goods covered by his importation which was the subject of the suit of Leerburger *v.* United States (130 Fed. Rep., 1022; T. D. 25388), affirmed by circuit court of appeals (T. D. 26462), except that in this case the goods were imported in the gray, while in the case in suit they were piece dyed.

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In the case referred to the circuit court of appeals found that the goods were composed in chief value of silk, and sustained the claim in the protest that the were dutiable at 50 per cent ad valorem under the provision in paragraph 391 for manufactures of silk not specially provided for.

The fact that the goods in this case are imported in the gray, while in the case in suit they were piece dyed, should not affect the determination of the question of component material of chief value, if, as we assume, the cost of dyeing was not added to or apportioned between the cotton and silk in determining the component material of chief value in the goods in suit. G. A. 4844 (T. D. 22745).

We therefore find, following the ruling of the court, that the goods here in question are composed in chief value of silk. As they are woven fabrics in the piece, weighing not less than 1⅓ ounces and not more than 8 ounces per square yard, and contain not more than 20 per cent in weight of silk in the gum, they are specifically provided for in paragraph 387 at the rate of 50 cents per pound, but not less than 50 per cent ad valorem.

In the Leerburger case (*supra*) the attention of the court does not appear to have been directed to paragraph 387, the only issue in that case apparently being one of chief value, and the court, having found that the goods were composed in chief value of silk, sustained the claim under paragraph 391. Had the court been called upon to decide whether the goods fell within the provisions of paragraph 387 or paragraph 391, we have no doubt that they would have held them to be dutiable under paragraph 387.

We accordingly hold in this case that the goods are properly dutiable under the provision in said paragraph 387 for "woven fabrics in the piece, not specially provided for in this Act, weighing not less than one and one-third ounces per square yard and not more than eight ounces per square yard, and containing not more than twenty per centum in weight of silk, *if in the gum*," at the rate of 50 cents per pound, but not less than 50 per cent ad valorem.

The importer claims that the goods are dutiable at 50 per cent ad valorem under paragraph 391 as manufactures of silk not specially provided for, or "at 60 cents per pound (or 50 per cent ad valorem) under the first clause of paragraph 388, same act, being woven fabrics in the piece, dyed, weighing not less than 1⅓ ounces nor more than 8 ounces per square yard, and containing not more than 20 per cent in weight of silk."

The alternative claim that the goods are dutiable under paragraph 388 is, undoubtedly, a clerical error. The language used in setting forth the claim under this paragraph shows that the importer intended to cite paragraph 387, which contains the provision for woven silk fabrics, and we therefore construe this claim as having been made under that paragraph. Shaw *v.* United States (122 Fed. Rep., 443), United States *v.* Hunter (124 *Id.*, 1005), and Weil *v.* United States (124 *Id.*, 1006).

But even construing this claim as having been made under paragraph 387, the protest is nevertheless insufficient, for the importer has failed to point out the provision of the statute which actually controls. The goods are not *piece dyed* goods dutiable at the rate of 60 cents per pound, but not less than 50 per cent ad valorem as claimed, but are woven silk fabrics "in the gum," dutiable at the rate of 50 cents per pound but not less than 50 per cent ad valorem.

The protest is therefore overruled for failure to make the proper claim, without an affirmance of the decision of the collector. United States *v.* Bayersdorfer (126 Fed. Rep., 732; T. D. 24923); Hamano *v.* United States (1 How., 344; T. D. 24946), and United States *v.* Fleitmann (137 Fed Rep., 476; T. D. 26118).

D. Macon Webster, for the importer.

J. Osgood Nichols, assistant United States attorney, for the United States.

MARTIN, *District Judge:* The petitioner prays for a review of the decision of the Board of United States General Appraisers as to the rate and amount of duty on certain merchandise imported by him by steamer *St. Louis*, November 12, 1900.

The merchandise consists of woven fabrics in the piece weighing not less than 1⅓ ounces nor more than 8 ounces per square yard, to wit, 1.37 ounces per square yard, and containing not more than 20 per cent in weight of silk in the gum, dutiable at he rate of 50 cents per pound but not less than 50 per cent ad valorem, as specially provided for in paragraph 387 of the tariff act of 1897. Duty was assessed by the collector at the rate of 8 cents per square yard and 30 per cent ad valorem under the provisions of paragraph 311 of said act. The collector found that cotton was the component material of chief value. The Board of Appraisers found that the chief value was of silk, and I affirm that finding. The fabrics in this case are the same as

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those involved in a previous case between the same parties, except in this case the goods were imported in the gum, while in the previous suit they were piece dyed. In the previous case the court found that the chief value was silk, the same as it is in this case. No claim was made on hearing but that an error was made by the collector, but the Government insists that the protest does not distinctly and specifically set forth the importer's reasons for his objection to the action of the collector, in that—

First. He refers to paragraph 388 instead of 387.

Second. He refers to the fabrics as being dyed in the piece instead of being in the gum. The Board of Appraisers excuse the error as to the paragraph as being clerical, but overruled the protest without affirmance of the decision of the collector because the word "dyed" is used in the protest. I concur with the ruling of the Board as to the error in the protest being clerical in reference to the paragraph, but to hold that the Government should keep the excess of duties collected because the word "dyed" is used in the protest seems to me more technical than just. The importer, in using the word "dyed" in his protest, made an error against himself of ten cents per pound, provided no reference is made to the provision for 50 per cent ad valorem. This error evidently arose from the fact that the goods involved in the previous case were fabrics dyed in the piece. The question of fact in dispute between the importer and the collector in the previous case and in this case was as to whether cotton or silk was the component material of chief value. In the former case, that fact was found with the importer, the same as that fact is now found with the importer in this case. The protest distinctly and correctly sets forth the date, place, and manner of importation, the material of which the goods were manufactured, the chief value of such material, and as being woven fabrics in the piece, weighing not less than 1½ ounces nor more than 8 ounces per square yard, and containing not more than 20 per cent in weight of silk. If no reference had been made in the protest to any paragraph of the tariff act, such a description must have directed the collector's attention to such provisions of the law as relate to woven fabrics in the piece, of the weight therein described and containing not more than 20 per cent in weight of silk, and, whether dyed in the piece or in the gum, the duty must be at least 50 per cent ad valorem and up to 50 cents per pound if in the gum, and 60 cents per pound if dyed in the piece, as provided in said paragraph 387. Whether it should be 50 or 60 cents a pound he could readily ascertain by looking at his sample. It was evident from the sample produced at the hearing that it was not dyed in the piece, but was in the gum. The error in the use of the word "dyed" was evidently not misleading, and was harmless. Former litigation must be construed to have established beyond further question that the fabrics made of this material do not come within the provisions of paragraph 311. The use of the word "dyed" in the protest thus—"being woven fabrics in the piece, dyed, weighing," etc.—I regard as superfluous or at least a clerical error.

Wherefore the decision of the Board of Appraisers in overruling the protest is reversed.

(T. D. 28263.)

Contracts for care of seamen, etc.

[Circular No. 40.]

TREASURY DEPARTMENT,
PUBLIC HEALTH AND MARINE-HOSPITAL SERVICE,
Washington, D. C., June 18, 1907.

To accounting officers, disbursing agents, and others concerned:

The following contracts for the care of seamen entitled to relief from this Service for the fiscal year ending June 30, 1908, are published for the information of accounting officers of the Treasury

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Department, disbursing agents, commissioned medical officers and acting assistant surgeons of the Public Health and Marine-Hospital Service, and customs officers. This circular is to be regarded as official notification of the acceptance of the proposals made by the parties designated, and must be cited, giving its number and date, on all bills for the treatment and maintenance of seamen, and for the burial of deceased hospital patients, as the authority for any expenditure incurred under its provisions. Charges will be allowed for the day of admission of a hospital patient, but not for the day of discharge or death. The right is reserved by the Secretary of the Treasury to terminate any contract whenever the interests of the Service require it. All relief must be furnished in accordance with the Regulations of the Public Health and Marine-Hospital Service; and, except as provided in paragraphs 445 and 448 of the regulations of the Service, no allowance will be made for expenditures incurred at any port not named in this circular.

Upon admission to a contract hospital of a patient with a disease or injury which, in the opinion of the medical officer, the acting assistant surgeon, or attending physician, will require more than twenty days treatment in hospital, and it appears that the patient can travel in safety without an attendant, the officer issuing the permit will at once request authority from the Bureau to transfer such patient to the nearest marine hospital, unless such authority be already given by this circular in the paragraph relating to the work at the particular station.

The attention of customs officers, commissioned medical officers, acting assistant surgeons, or other physicians in charge of patients of the Public Health and Marine-Hospital Service at contract stations, is hereby called to the necessity of discharging patients promptly upon the termination of the necessary hospital treatment, and without awaiting the expiration of the period authorized in the permit.

The term "contagious diseases," wherever occurring in this circular, includes only those diseases which, under usual municipal regulations, are required to be treated in a special hospital for contagious diseases.

WALTER WYMAN, *Surgeon-General.*

Approved: JAMES B. REYNOLDS,
Acting Secretary of the Treasury.

ALBANY, N. Y.

The medical attendance to be furnished by an acting assistant surgeon; Albany Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.15 a day; contagious diseases, $2 a day.

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APALACHICOLA, FLA.

Dr. Jos. S. Murrow to furnish medical attendance and medicines to all hospital and out-patients, at $35 a month; to furnish quarters, subsistence, and nursing to hospital patients, at $1.15 a day, and to provide for the burial of deceased patients at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Mobile, Ala.

ASHLAND, WIS.

Dr. J. M. Dodd to furnish quarters, subsistence, nursing, medical attendance, and medicines, at $1 a day; contagious diseases, $2 a day; and to provide for the burial of deceased patients, at $12 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

ASHTABULA, OHIO.

The medical attendance to be furnished by an acting assistant surgeon; Ashtabula General Hospital to furnish quarters, subsistence, and nursing, at $1.25 a day; contagious diseases, $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

ASTORIA, OREG.

The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $3 a day; J. A. Gilbaugh & Co. to provide for the burial of deceased patients, at $16 each.

BALTIMORE, MD.

Hospital patients to be cared for in the United States Marine Hospital; H. E. Hughes to provide for the burial of deceased patients, at $12 each.

BANGOR, ME.

The medical attendance to be furnished by an acting assistant surgeon; Adelbert Chandler to furnish quarters, subsistence, and nursing, at $1.25 a day; Abel Hunt to provide for the burial of deceased patients, at $10 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

BATH, ME.

The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

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BEAUFORT, N. C.

The medical attendance to be furnished by an acting assistant surgeon; John H. Skarren to furnish quarters, subsistence, and nursing, at $1 a day, and to provide for the burial of deceased patients at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Wilmington, N. C.

BOOTHBAY HARBOR, ME.

The medical attendance to be furnished by an acting assistant surgeon; Mary J. Barter to furnish quarters, subsistence, and nursing, at $1 a day; contagious diseases, $2 a day; T. L. Montgomery to provide for the burial of deceased patients, at $7 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

BOSTON, MASS.

Hospital patients to be cared for in the United States Marine Hospital at Chelsea, Mass.

BRIDGEPORT, CONN.

Bridgeport Hospital to furnish quarters, subsistence, nursing, medical attendance, and medicines, at $1 a day; Hawley, Wilmot & Reynolds to provide for the burial of deceased patients, at $16 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Stapleton, N. Y.

BROWNSVILLE, TEX.

The medical attendance to be furnished by an acting assistant surgeon.

BRUNSWICK, GA.

The medical attendance to be furnished by an acting assistant surgeon; Brunswick Hospital to furnish quarters, subsistence, and nursing, at $1 a day; C. G. Moore to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital, at Savannah, Ga.

BUFFALO, N. Y.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; Riverside Accident Hospital to furnish quarters, subsistence, internes, nursing, and medicines, at $1.25 a day; contagious diseases, $2.25 a day, except cases of smallpox, cholera, plague, and yellow fever, which will be cared for by the health commissioner of Buffalo, at $2 a day; Thomas J. Creighton to provide for the burial of deceased patients, at $14 each.

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Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

BURLINGTON, IOWA.

Mercy Hospital to furnish quarters, subsistence, medical attendance, nursing, and medicines, at $1 a day; contagious diseases, $2 a day; I. Prugh & Son to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at St. Louis, Mo.

CAIRO, ILL.

Hospital patients to be cared for in the United States Marine Hospital; M. E. Feith to provide for the burial of deceased patients, at $7 each.

CAMBRIDGE, MD.

The medical attendance to be furnished by an acting assistant surgeon; United Charities Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Le Compte & Harper to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

CEDAR KEYS, FLA.

The medical attendance to be furnished by an acting assistant surgeon; J. M. Pickett to provide for the burial of deceased patients, at $15 each.

CHARLESTON, S. C.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Francis Xavier's Infirmary to furnish quarters, subsistence, services of interne, nursing, medicines, and ambulance service, at $1 a day; contagious diseases, $2 a day; Brennan Brothers to provide for the burial of deceased patients, at $11 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Wilmington, N. C.

CHATTANOOGA, TENN.

The medical attendance to be furnished by an acting assistant surgeon; Baroness Erlanger Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Chas. Watson to care for patients with contagious diseases, at $2 a day; G. W. Franklin, Jr., to provide for the burial of deceased patients, at $15 each.

CHICAGO, ILL.

Hospital patients to be cared for in the United States Marine Hospital; B. E. Arntzen to provide for the burial of deceased patients, at $10 each.

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CINCINNATI, OHIO.

The medical attendance to be furnished by an acting assistant surgeon; Cincinnati Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $1.33 a day; Theo. Homer to provide for the burial of deceased patients, at $19 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Louisville, Ky.

CLEVELAND, OHIO.

Hospital patients to be cared for in the United States Marine Hospital; Fred Beilstein to provide for the burial of deceased patients, at $13 each; ambulance service, at $1 a trip.

CORPUS CHRISTI, TEX.

The medical attendance to be furnished by an acting assistant surgeon; Spohn Sanitarium to furnish quarters, subsistence, and nursing, at $1.50 a day.

CRISFIELD, MD.

The medical attendance to be furnished by an acting assistant surgeon; R. J. Adams to provide for the burial of deceased patients at $18 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

DARIEN, GA.

The medical attendance to be furnished by an acting assistant surgeon.

DELAWARE BREAKWATER, DEL.

Hospital patients to be cared for in the United States Quarantine Hospital, the appropriation for quarantine maintenance, 1907, to be reimbursed at the rate of $2 a day for each patient treated in hospital. Patients requiring hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at Baltimore, Md.

DETROIT, MICH.

Hospital patients to be cared for in the United States Marine Hospital; C. N. Flattery to provide for the burial of deceased patients, at $12 each.

DUBUQUE, IOWA.

The medical attendance to be furnished by an acting assistant surgeon; St. Joseph's Mercy Hospital to furnish ambulance service, quarters, subsistence, nursing, and medicines, at 86 cents a day; the Dubuque board of health to care for patients with contagious diseases, including ambulance service, at $2.50 a day; C. W. Walton

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to provide for the burial of deceased patients, at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at St. Louis, Mo.

DULUTH, MINN.

The medical attendance to be furnished by an acting assistant surgeon; St. Luke's Hospital Association to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Charles J. Stewart to provide for the burial of deceased patients, at $18 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

EASTPORT, ME.

The medical attendance to be furnished by an acting assistant surgeon. Patients requiring hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

EDENTON, N. C.

Richard Dillard, M. D., to furnish quarters, subsistence, nursing, medical attendance, and medicines, at $2 a day; for out-patients, $1 will be allowed for each medical examination, including medicines; L. F. Ziegler to provide for the burial of deceased patients at $16 each.

EDGARTOWN, MASS.

Patients requiring hospital treatment, if able to bear transportation, will be sent to the United States Marine Hospital at Vineyard Haven, Mass.

ELIZABETH CITY, N. C.

The medical attendance to be furnished by an acting assistant surgeon.

ELLSWORTH, ME.

The medical attendance to be furnished by an acting assistant surgeon; patients requiring hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at Portland, Me.

EL PASO, TEX.

Patients en route to Fort Stanton will be furnished necessary medical attention by an acting assistant surgeon, who will also provide them with necessary meals and lodging during their detention at this point.

ERIE, PA.

The medical attendance to be furnished by an acting assistant surgeon; the Hamot Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day; the board of health to care for patients

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with contagious diseases, at $3 a day; Lawrie Brothers to furnish ambulance service, at $3 for each trip. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

ESCANABA, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Delta County Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; D. A. Oliver to provide for the burial of deceased patients, at $14 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

EUREKA, CAL.

The medical attendance to be furnished by an acting assistant surgeon; Sequoia Hospital and Sanitarium Association to furnish quarters, subsistence, nursing, and medicines, at $1.70 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at San Francisco, Cal.

EVANSVILLE, IND.

Hospital patients to be cared for in the United States Marine Hospital; R. Smith to provide for the burial of deceased patients, except smallpox cases, at $11.75 each.

FERNANDINA, FLA.

The medical attendance to be furnished by an acting assistant surgeon; A. G. Webster to furnish quarters, subsistence, and nursing, at $1.50 a day; contagious diseases, $2.50 a day; R. M. Henderson to provide for the burial of deceased patients, at $10 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Savannah, Ga.

FORT STANTON, N. MEX.

Sanatorium for the care and treatment of tuberculosis patients; medical officers should apply to the Surgeon-General for authority to transfer suitable cases thereto.

GALLIPOLIS, OHIO.

The medical attendance to be furnished by an acting assistant surgeon; James F. Walker to furnish quarters, subsistence, and nursing, at $1 a day; contagious diseases, $2 a day; G. J. Wetherholt to provide for the burial of deceased patients, at $14.50 each. Patients who require extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Louisville, Ky.

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GALVESTON, TEX.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Mary's Infirmary to furnish ambulance service, quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $2 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at New Orleans, La.; J. Levy & Bro. to provide for the burial of deceased patients at $19.50 each.

GEORGETOWN, S. C.

The medical attendance to be furnished by an acting assistant surgeon; Georgetown Infirmary to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day; contagious diseases, $2.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Wilmington, N. C.

GLOUCESTER, MASS.

The medical attendance to be furnished by an acting assistant surgeon; Addison Gilbert Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; George L. Browne to provide for the burial of deceased patients at $10 each. Patients requiring hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Boston, Mass.

GOVERNMENT HOSPITAL FOR THE INSANE, D. C.

Under act of Congress, March 3, 1875, to furnish quarters, subsistence, nursing, medical attendance, and medicines, at $4.50 a week, for each insane patient admitted upon the order of the Secretary of the Treasury.

GRAND HAVEN, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Anna Farnham to furnish quarters, subsistence, and nursing, at $1 a day; John J. Boer to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

GREEN BAY, WIS.

The medical attendance to be furnished by an acting assistant surgeon; St. Vincent's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day. Findeisen & Greiser Company to provide for the burial of deceased patients, at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

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HARTFORD, CONN.

The St. Francis Hospital to furnish quarters, subsistence, medical attendance, nursing, and medicines at $1 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Stapleton, N. Y.

HONOLULU, HAWAII.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; patients suffering from tuberculosis and incurable diseases, excepting leprosy, to be furnished quarters, subsistence, nursing, and necessary medicines by the Leahi Home, at $1.50 a day; others, excepting contagious diseases, by the Queen's Hospital, at $1.50 a day; H. H. Williams to provide for the burial of deceased patients, at $20 each. Patients requiring extended hospital treatment, will, if able to bear transportation, be transferred to the United States Marine Hospital at San Francisco, Cal.

HOQUIAM, WASH.

The medical attendance to be furnished by an acting assistant surgeon; Hoquiam General Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.20 a day; contagious diseases, $2.50 a day; L. McTaggart to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash.

HOUGHTON, MICH.

The medical attendance to be furnished by an acting assistant surgeon; St. Joseph's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.20 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

IRVINGTON, VA.

The medical attendance to be furnished by an acting assistant surgeon. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

JACKSONVILLE, FLA.

The medical attendance to be furnished by an acting assistant surgeon; Eugenie Barr to furnish quarters, subsistence, and nursing, at $1.50 a day; Wm. H. Jones to care for patients with contagious diseases, at $2 a day; Chas. A. Clark (Incorporated) to provide for the burial of deceased patients, at $5 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Savannah, Ga.

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JUNEAU, ALASKA.

Simpson Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.20 a day. Patients who require extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash.

KETCHIKAN, ALASKA.

The medical attendance to be furnished by an acting assistant surgeon; St. John's Hospital to furnish quarters, subsistence, nursing, and medicines, at $2 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash.

KEY WEST, FLA.

Hospital patients to be cared for in the United States Marine Hospital; B. P. Baker to provide for the burial of deceased patients, at $5.25 each.

LA CROSSE, WIS.

The medical attendance to be furnished by an acting assistant surgeon; La Crosse Hospital Association to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagions diseases, $2 a day; Fessler & Dahl to provide for the burial of deceased patients, at $13.50 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at St. Louis, Mo.

LITTLE ROCK, ARK.

The medical attendance to be furnished by an acting assistant surgeon; St. Vincent's Infirmary to furnish quarters, subsistence, nursing, and medicines, at $1 a day; James Cook & Son to provide for the burial of deceased patients at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at New Orleans, La.

LOS ANGELES, CAL.

The medical attendance to be furnished by a medical office of the Public Health and Marine-Hospital Service; the Angelus Hospital to furnish quarters, subsistence, nursing, medicines, anæsthetizing, surgical dressings, and extra nursing for delirious cases, at $1.50 a day; Pierce Brothers & Co. to provide for the burial of deceased patients, at $6.45 each, and to furnish ambulance service, at $2 a trip. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at San Francisco, Cal.

LOUISVILLE, KY.

Hospital patients to be cared for in the United States Marine Hospital; L. D. Bax to provide for the burial of deceased patients at $20 each.

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LUDINGTON, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Mrs. H. D. Lindsley to furnish quarters, subsistence, and nursing, at $1 a day; H. M. Hallett & Co. to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine-Hospital at Chicago, Ill.

MACHIAS, ME.

The medical attendance to be furnished by an acting assistant surgeon; Addie A. Hill to furnish quarters, subsistence, and nursing, at $1.50 a day; E. M. Bucknam to provide for the burial of deceased patients, at $18 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

MANISTEE, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Mercy Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day; H. D. Bradford to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

MANITOWOC, WIS.

The medical attendance to be furnished by an acting assistant surgeon; the Holy Family Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, except smallpox, $2 a day; C. & W. Frazier to provide for the burial of deceased patients, at $7 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

MARQUETTE, MICH.

The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Hager Brothers Company (Limited) to provide for the burial of deceased patients, at $8 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

MARSHFIELD, OREG.

The medical attendance to be furnished by an acting assistant surgeon; Mercy Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at San Francisco, Cal.

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MEMPHIS, TENN.

Hospital patients to be cared for in the United States Marine Hospital; Thompson Brothers to provide for the burial of deceased patients, at $19.50 each.

MENOMINEE, MICH.

The medical attendance to be furnished by an acting assistant surgeon; St. Joseph's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $3 a day; Square People Undertaking Company to provide for the burial of deceased patients, at $12 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

MILWAUKEE, WIS.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Mary's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; the commissioner of health to care for patients with contagious diseases, at $2 a day; Wendler & Son to provide for the burial of deceased patients, at $16 each. Patients who require extended hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at Chicago, Ill.

MOBILE, ALA.

Hospital patients to be cared for in the United States Marine Hospital; Beroujon & Sands to provide for the burial of deceased patients, at $12.69 each.

NASHVILLE, TENN.

The medical attendance to be furnished by an acting assistant surgeon; City Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Finley M. Dorris to provide for the burial of deceased patients, at $13 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Memphis, Tenn.

NATCHEZ, MISS.

The medical attendance to be furnished by an acting assistant surgeon; Natchez Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; the city health officer to care for contagious cases, at $2 a day; the Natchez Undertaking Company to provide for the burial of deceased patients at $14.50 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at New Orleans, La.

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NEW BEDFORD, MASS.

The medical attendance to be furnished by an acting assistant surgeon; St. Luke's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; Peleg H. Sherman to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment, if able to bear transportation, will be transferred to the United States Marine Hospital at Vineyard Haven, Mass.

NEWBERN, N. C.

The medical attendance to be furnished by an acting assistant surgeon; Stewart Sanatorium to furnish quarters, subsistence, and nursing, at $1.25 a day; H. W. Simpson to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Wilmington, N. C.

NEW HAVEN, CONN.

The medical attendance to be furnished by an acting assistant surgeon; The General Hospital Society of Connecticut to furnish quarters, subsistence, nursing, and medicines, at $1 a day, and to provide for the burial of deceased patients, at $15 each; the city of New Haven to care for patients with contagious diseases, at $3 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Stapleton, N. Y.

NEW LONDON, CONN.

The medical attendance to be furnished by an acting assistant surgeon; Memorial Hospital Association to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Stapleton, N. Y.; E. P. Prentis to provide for the burial of deceased patients, at $16.50 each.

NEW ORLEANS, LA.

Hospital patients to be cared for in the United States Marine Hospital; the McMahon Burial Company (Limited) to provide for the burial of deceased patients, at $15 each.

NEWPORT, ARK.

The medical attendance to be furnished by an acting assistant surgeon; H. B. Jones to furnish quarters, subsistence, and nursing, at $1.25 a day; H. G. Drummond to provide for the burial of deceased patients at $12 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Memphis, Tenn.

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NEWPORT, R. I.

The medical attendance to be furnished by an acting assistant surgeon; Newport Hospital to furnish quarters, subsistence, nursing, and medicines, at $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Boston, Mass.

NEWPORT NEWS, VA.

The medical attendance to be furnished by an acting assistant surgeon; Newport News Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; W. E. Rouse to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

NEW YORK, N. Y.

Hospital patients to be cared for in the United States Marine Hospital, Stapleton, Staten Island, N. Y.

NORFOLK, VA.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; Hospital of St. Vincent of Paul to furnish quarters, subsistence, nursing, medicines, interne, and ambulance service, at $1 a day; contagious diseases, at $2.50 a day; O. L. Gregory to provide for the burial of deceased patients at $14 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

OGDENSBURG, N. Y.

The medical attendance to be furnished by an acting assistant surgeon; Ogdensburg City Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $2 a day; Fleming & Sovie Company to provide for the burial of deceased patients, at $14 each. Patients who will probably require a long period of hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

OSWEGO, N. Y.

The Oswego Hospital to furnish quarters, subsistence, medical attendance, nursing, and medicines, at $1.75 a day; John F. Dain & Son to provide for the burial of deceased patients, at $15 each; patients who will probably require a long period of hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

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PADUCAH, KY.

The medical attendance to be furnished by an acting assistant surgeon; the city of Paducah to furnish quarters, subsistence, and nursing, at $1.43 a day; contagious diseases, $2.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cairo, Ill.

PENSACOLA, FLA.

The medical attendance to be furnished by an acting assistant surgeon; Warren E. Anderson to furnish quarters, subsistence, nursing, and medicines, at $1.40 a day; contagious diseases, $2 a day; F. R. Pou to provide for the burial of deceased patients, at $8.50 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Mobile, Ala.

PHILADELPHIA, PA.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Agnes' Hospital to furnish quarters, subsistence, nursing, medicines, and one interne, at $1 a day, and ambulance service, at $2 a trip; the city authorities to care for patients with contagious diseases at $1 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

PITTSBURG, PA.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; Mercy Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; the Director Department of charities and correction to care for patients with contagious diseases, at $2 a day; John J. Giltinan to provide for the burial of deceased patients, at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Louisville, Ky.

PONCE, P. R.

The medical attendance to be furnished by an acting assistant surgeon; the Santo Asilo de Damos to furnish quarters, subsistence, nursing, and medicines, at $1.25 a day; Antonio Oben to provide for the burial of deceased patients at $20 each.

PORT HURON, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Port Huron Hospital and Home to furnish quarters, subsistence, nursing, and medicine, at $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Detroit, Mich.

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PORTLAND, ME.

Hospital patients to be cared for in the United States Marine Hospital; Hay & Peabody to provide for the burial of deceased patients at $18 each.

PORTLAND, OREG.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Vincent's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $2 a day; ambulance service, at $3 a trip; the Edward Holman Undertaking Company to provide for the burial of deceased patients at $8 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash., except cases considered proper for treatment at Fort Stanton, which will be transferred to the Marine Hospital at San Francisco.

PORTSMOUTH, N. H.

The medical attendance to be furnished by an acting assistant surgeon; Cottage Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; H. W. Nickerson to provide for the burial of deceased patients, at $10 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

PORT TAMPA, FLA.

The medical attendance to be furnished by an acting assistant surgeon; R. F. Altree to furnish quarters, subsistence, and nursing, at $1 a day; J. L. Reed to provide for the burial of deceased patients, $9.50 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Key West, Fla.

PORT TOWNSEND, WASH.

Hospital patients to be cared for in the United States Marine Hospital; Port Townsend Undertaking Company to provide for the burial of deceased patients, at $16 each. Patients suffering with tuberculosis who are considered proper cases for treatment at Fort Stanton will be transferred to the marine hospital at San Francisco.

PROVIDENCE, R. I.

The medical attendance to be furnished by an acting assistant surgeon; East Side Hospital to furnish quarters, subsistence, nursing, and necessary medicines at the rate of $1.50 a day; D. F. McCarthy & Son to provide for the burial of deceased patients, at $15 each. Patients who require extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Boston, Mass.

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PROVINCETOWN, MASS.

The medical attendance to be furnished by an acting assistant surgeon; Mrs. Collin McDonald to furnish quarters, subsistence, and nursing, at $1.25 a day; John A. Cook to provide for the burial of deceased patients at $14 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Boston, Mass.

RICHMOND, VA.

The medical attendance to be furnished by an acting assistant surgeon; "Retreat for the Sick" to furnish quarters, subsistence, nursing, and medicines for white patients, at $1 a day, and Richmond hospital for colored patients, at $1 a day; Thos. A. Reddin to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

ROCKLAND, ME.

The medical attendance to be furnished by an acting assistant surgeon; Knox County General Hospital to furnish quarters, subsistence, and nursing, at $1 a day; E. A. Burpee to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Portland, Me.

SAGINAW, MICH.

The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagiuos diseases, $2 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Detroit, Mich.

ST. MICHAEL, ALASKA.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; the Northern Commercial Company to furnish quarters, subsistence, and nursing, at $2.50 a day. Patients requiring extended hospital treatment to be transferred to the United States Marine Hospital at Port Townsend, Wash.

ST. LOUIS, MO.

Hospital patients to be cared for in the United States Marine Hospital; Peetz Brothers to provide for the burial of deceased patients, at $16 each.

ST. PAUL, MINN.

The medical attendance to be furnished by an acting assistant surgeon; St. Joseph's Hospital to furnish quarters, subsistence, nursing, and medicines, at 72 cents a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at St. Louis, Mo.

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SAN DIEGO, CAL.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; St. Joseph's Hospital and Sanitarium to furnish quarters, subsistence, nursing, medicines, ambulance service, laundering of patient's underwear, use of furnished operating room, splints, and surgical dressings, at $1.69 a day; Johnson & Connell to provide for the burial of deceased patients, at $17 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at San Francisco, Cal.

SANDUSKY, OHIO.

The medical attendance to be furnished by an acting assistant surgeon; Providence Hospital to furnish quarters, subsistence, and nursing, at $1.50 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Cleveland, Ohio.

SAN FRANCISCO, CAL.

Hospital patients to be cared for in the United States Marine Hospital; burial of deceased patients at the hospital cemetery; burial of foreign seamen, at $10 each. Insane patients to be cared for at the State insane hospitals, at $15 a month for each patient.

SAN JUAN, P. R.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; the United States Military Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; patients with contagious diseases to be cared for at the quarantine station, and the appropriation for quarantine maintenance, 1908, to be reimbursed at the rate of $2.50 a day; insane patients to be cared for at the Insane Asylum of Porto Rico, at 50 cents a day for each patient; Dordal y Mesa to provide for the burial of deceased patients, at $10 each.

SAULT STE. MARIE, MICH.

The medical attendance to be furnished by an acting assistant surgeon; Sault Ste. Marie Hospital to furnish quarters, subsistence, nursing, and medicines at the rate of $1.10 a day; contagious diseases, $2 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

SAVANNAH, GA.

Hospital patients to be cared for in the United States Marine Hospital; John A. Goette to provide for the burial of deceased patients, at $10 each.

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SEATTLE, WASH.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; Providence Hospital (Sisters of Charity) to furnish quarters, subsistence, nursing, and medicines, at 98 cents a day. Patients requiring hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at Port Townsend, Wash., except cases considered proper for treatment at Fort Stanton, which will be transferred to the marine hospital at San Francisco, Cal.

SHEBOYGAN, WIS.

The medical attendance to be furnished by an acting assistant surgeon; St. Nicholas Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; M. Kroos & Son to provide for the burial of deceased patients, at $18 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

SITKA, ALASKA.

Allan Stuart, M. D., to furnish quarters, subsistence, medical attendance, nursing, and medicines, at $3 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash.

SOLOMONS, MD.

The medical attendance to be furnished by an acting assistant surgeon; C. E. Davis to furnish subsistence, nursing, fuel, lights, and water, at $1 a day; J. J. Saunders to provide for the burial of deceased patients, at $8 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

SUPERIOR, WIS.

The medical attendance to be furnished by an acting assistant surgeon; St. Mary's Hospital to furnish quarters, subsistence, nursing, and medicines, at 90 cents a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Chicago, Ill.

TACOMA, WASH.

The medical attendance to be furnished by an acting assistant surgeon; Fannie C. Paddock Memorial Hospital to furnish quarters, subsistence, nursing, and medicines, at 85 cents a day; contagious diseases, $3 a day; Conrad L. Hoska to provide for the burial of deceased patients, at $10 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Port Townsend, Wash.

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TOLEDO, OHIO.

The medical attendance to be furnished by an acting assistant surgeon; the Toledo Hospital to furnish quarters, subsistence, nursing, and medicines, at $1 a day; contagious diseases, $2 a day; and to provide for the burial of deceased patients, at $12 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Detroit, Mich.

VALDEZ, ALASKA.

The medical attendance to be furnished by an acting assistant surgeon.

VICKSBURG, MISS.

The medical attendance to be furnished by an acting assistant surgeon; Vicksburg Infirmary to furnish quarters, subsistence, nursing, and medicines, at $1.25 a day; J. Q. Arnold to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be sent to the United States Marine Hospital at New Orleans, La.

VINEYARD HAVEN, MASS.

Hospital patients to be cared for in the United States Marine Hospital; Moses C. Vincent to provide for the burial of deceased patients, at $18 each.

WASHINGTON, D. C.

The medical attendance to be furnished by a medical officer of the Public Health and Marine-Hospital Service; Providence Hospital to furnish quarters, subsistence, nursing, interne attendance, and medicines, at 75 cents a day; contagious diseases, $1 a day; and to provide for the burial of deceased patients, at $20 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Baltimore, Md.

WASHINGTON, N. C.

The medical attendance to be furnished by an acting assistant surgeon; Fowle Memorial Hospital to furnish quarters, subsistence, and nursing at the rate of $1.15 a day; contagious diseases, $1.50 a day; Southern Furniture Company to provide for the burial of deceased patients, at $15 each. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Wilmington, N. C.

WHEELING, W. VA.

The medical attendance to be furnished by an acting assistant surgeon; the Wheeling Hospital and Orphan Asylum to furnish

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quarters, subsistence, nursing, and medicines, at $1 a day. Patients requiring extended hospital treatment will, if able to bear transportation, be transferred to the United States Marine Hospital at Louisville, Ky.

WILMINGTON, N. C.

Hospital patients to be cared for in the United States Marine Hospital; Walter E. Yopp to provide for the burial of deceased patients, at $18 each.

At the following named ports, the rate for quarters, subsistence, and nursing will, in each special case, be fixed by the Bureau, upon the recommendation of the proper officer, in accordance with the regulations of the Public Health and Marine-Hospital Service (pars. 513 and 514): Bath, Me.; Brownsville, Tex.; Cedar Keys, Fla.; Crisfield, Md.; Darien, Ga.; Elizabeth City, N. C.; Ellsworth, Me.; Irvington, Va.; Nome, Alaska; Valdez, Alaska.

At the following-named ports, hospital or other relief will be furnished only under the provisions of the regulations of the Public Health and Marine-Hospital Service (pars. 476, 513, and 665): Alexandria, Va.; Barnstable, Mass.; Beaufort, S. C.; Belfast, Me.; Castine, Me.; Chatham, Mass.; Dennis, Mass.; Eastport, Me.; Edgartown, Mass.; Hyannis, Mass.; Perth Amboy, N. J.; Rome, Ga.; Sag Harbor, N. Y.; Salem, Mass.; Somers Point, N. J.; Tappahannock, Va.; Waldoboro, Me.; Wilmington, Del.; Wiscasset, Me.

Officers and enlisted men of the United States Army and Navy may be admitted for care and treatment as patients of the Service upon the written request of the proper military or naval authority, the rate of charge to be 50 cents a day at United States marine hospitals, and the regular contract rate to be charged at stations of the second and third class. Patients of the above-named class are not subject to the provisions regarding transfer to marine hospitals.

The rate of charge for the care of seamen from foreign vessels (admitted under act of March 3, 1875) will be $1 a day at United States marine hospitals. At second and third class stations seamen from foreign vessels will be cared for at contract rates. Patients of the above class are not subject to the provisions regarding transfer to marine hospitals.

(T. D. 28264.)

Drawback on bottle stoppers.

Drawback allowed on bottle stoppers manufactured by L. Mundet & Sons, of Brooklyn, N. Y., in part from imported cork disks.

TREASURY DEPARTMENT, *June 20, 1907.*

SIR: On the exportation of bottle stoppers manufactured by L. Mundet & Sons, of Brooklyn, N. Y., with the use of imported cork

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disks in combination with stamped tin and paraffin paper, a drawback will be allowed equal in amount to the duty paid on the cork disks so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages, the gross and net weight thereof, and the total number in gross of stoppers contained in the entire shipment.

The drawback entry must show the total number of bottle stoppers exported and the net weight and number of stoppers contained therein, and the total number of pounds of imported cork disks contained therein and consumed in the manufacture thereof, describing the cork disks as they are described in the import invoice or invoices, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated June 1, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of cork disks in condition as imported which may be taken as the basis for the allowance of drawback may equal the quantity consumed and declared in the drawback entry, after official verification of exported quantities, provided it shall not exceed 9¼ pounds of cork disks for each 100 gross of bottle stoppers exported.

Respectfully, JAMES B. REYNOLDS,
(46668.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28265.)

Drawback on micanite sheets or articles manufactured therefrom.

Drawback allowed on micanite sheets, etc., manufactured by the Mica Insulator Company, of Schenectady, N. Y., wholly with the use of imported uncut mica.

TREASURY DEPARTMENT, *June 20, 1907.*

SIR: On the exportation of micanite sheets or articles manufactured therefrom, manufactured by the Mica Insulator Company, of Schenectady, N. Y., wholly with the use of imported uncut mica, a drawback will be allowed equal in amount to the duty paid on the imported uncut mica so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight of each package separately and in the aggregate.

The drawback entry must show the total weight of the micanite sheets and articles exported, and the total weight of the imported mica consumed in the manufacture thereof, to which shall be attached a sworn abstract from their special manufacturing record, according to the form in the manufacturers' sworn statement and an affidavit stating, in addition to the usual averments, that the merchandise

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was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated June 4, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported uncut mica which may be taken as the basis for the allowance of drawback may be the quantity declared in the drawback entry after official verification of exported quantities, provided that in no case shall it exceed the weight of the imported uncut mica consumed in the manufactures.

Respectfully, JAMES B. REYNOLDS,
(23177.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28266.)

Drawback on stoves and furnaces.

Drawback allowed on stoves and furnaces manufactured by the Danville Stove and Manufacturing Company, of Danville, Pa., in part from imported pig iron.

TREASURY DEPARTMENT, *June 20, 1907.*

SIR: On the exportation of stoves and furnaces manufactured by the Danville Stove and Manufacturing Company, of Danville, Pa., with the use in part of imported pig iron, a drawback will be allowed equal to the amount of the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and numbers of the shipping packages and the gross and net weight of each package separately and in the aggregate.

The drawback entry must show the total gross and net weight of the stoves and furnaces exported, and the quantity and percentage of imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated June 7, 1907, transmitted herewith for filling in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantities, provided it shall not exceed the net weight of the imported iron contained in the exported articles, with 5 per cent of such weight added thereto to compensate for loss in manufacture.

Respectfully, JAMES B. REYNOLDS,
(46442.) *Acting Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28267.)

Drawback on power transmission machinery, boiler grates, and general castings.

Drawback allowed on power transmission machinery, boiler grates, and general castings manufactured by the National Foundry Manufacturing and Supply Company, of Williamsport, Pa., in part from imported pig iron.

TREASURY DEPARTMENT, *June 20, 1907.*

SIR: In the exportation of power transmission machinery, boiler grates, and general castings manufactured by the National Foundry Manufacturing and Supply Company, of Williamsport, Pa., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the imported pig iron so used, less the legal deduction of 1 per cent.

The preliminary entry must show the marks and the net weight of machinery, grates, or castings contained in the shipment.

The drawback entry must show the total net weight of the machinery, grates, and castings exported, and the quantity and percentage of imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of materials and in the manner set forth in the manufacturers' sworn statement, dated June 8, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for the allowance of drawback may equal the quantity declared in the drawback entry, after official verification of exported quantities, provided that the same shall not exceed the quantity of imported pig iron contained therein, with an addition of 5 per cent of the weight thereof, to compensate for the loss in the manufacture.

Respectfully, JAMES B. REYNOLDS,
(47750.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28268.)

Authority of Keystone Bonding Company revoked.

[Circular No. 41.]

TREASURY DEPARTMENT, *June 20, 1907.*

Notice is hereby given to all officers in and under the Treasury Department required by law to take and approve recognizances, stipulations, bonds, or other undertakings that the Keystone Bonding Company, of Philadelphia, Pa., has gone into liquidation, and that its authority to do business with the United States under the provisions of the act of Congress approved August 13, 1894, has been revoked.

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The Department is advised that the United Surety Company of Baltimore, Md., has entered into a contract to reinsure all risks heretofore assumed by the Keystone Bonding Company, and it is therefore hereby ordered that in all cases where the Keystone Bonding Company has qualified as surety on any bond or undertaking under this Department, immediate steps be taken to procure a new bond or undertaking running directly to the United States.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28269.)

Drawback on artificial horsehair.

Drawback allowed on dyed or dyed and spooled artificial horsehair prepared by the Chardonnet Artificial Silk Company, of New York City, from artificial horsehair imported in skeins.—T. D. 26684 extended.

TREASURY DEPARTMENT, *June 21, 1907.*

SIR: Department's regulations of August 30, 1905 (T. D. 26684), allowing drawback on dyed or dyed and spooled artificial silk manufactured from imported artificial silk in the gray, for and on account of the Chardonnet Artificial Silk Company, of New York City, are hereby extended to cover dyed or dyed and spooled artificial horsehair prepared by the same company from artificial horsehair imported in skeins.

The Department does not consider the mere spooling a manufacture within the meaning of section 30 of the act of July 24, 1897, and can not therefore allow drawback on the exportation of artificial horsehair undergoing no process other than mere spooling in the United States.

Respectfully, JAMES B. REYNOLDS,
(30255.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28270.)

Drawback on mowing, reaping, and harvesting machinery.

Drawback allowed on mowing, reaping, and harvesting machinery manufactured by the Walter A. Wood Mowing and Reaping Machine Company, of Hoosick Falls, N. Y., in part from imported pig iron.

TREASURY DEPARTMENT, *June 21, 1907.*

SIR: On the exportation of mowing, reaping, and harvesting machinery manufactured by the Walter A. Wood Mowing and Reaping Machine Company, of Hoosick Falls, N. Y., with the use in part of imported pig iron, a drawback will be allowed equal in amount to the duty paid on the pig iron so used, less the legal deduction of 1 per cent.

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The preliminary entry must show the marks and numbers of the shipping packages, and the number and kind of machines, and the gross and net weight of each package separately and in the aggregate.

The drawback entry must show the total number of each kind of machine exported and the net weight of the castings contained therein and the quantity and percentage of imported pig iron contained therein and consumed in the manufacture thereof, and, in addition to the usual averments, that the merchandise was manufactured of the materials and in the manner set forth in the manufacturers' sworn statement, dated May 23, 1907, transmitted herewith for filing in your office.

In liquidation, the quantity of imported pig iron which may be taken as the basis for allowance of drawback may equal the quantity declared in the drawback entry after official verification of exported quantities, provided it shall not exceed the net weight of the imported pig iron contained in the exported article as shown by their sworn schedule aforesaid, with 5 per cent of such weight added thereto to compensate for the loss in the manufacture.

Supplemental sworn schedules of the machinery and the weight of the castings may be filed with the collector whenever any change is made of the weights of the castings differing from those contained in the aforesaid sworn schedule, or in the event of making any other kind or name of farming machinery.

Respectfully, JAMES B. REYNOLDS,
(2610.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28271.)

Compensation of inspectors for service in lading and unlading vessels at night.

One full day's pay is to be allowed for service performed before 11 o'clock p. m., and two full days' pay for service which commences before and continues after 11 p. m., or is rendered after 11 o'clock p. m. The maximum amount which can be paid for one night's service is two days' pay.

TREASURY DEPARTMENT, *June 21, 1907.*

SIR: Replying to the inquiry contained in your letter of the 6th instant, relative to the provisions of Department Circular 35 of June 1, 1907, governing payment of compensation of inspectors of customs while engaged in supervising the lading and unlading of vessels at night, you are informed that one full day's pay is to be allowed for service performed before 11 o'clock p. m., and two full days' pay for service which commences before and continues after 11 p. m., or is rendered after 11 p. m. In other words, any night service which ends at or before 11 o'clock is to be compensated by an amount equal to one day's pay of the inspector, and any night service which ends

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after 11 o'clock, no matter when it began, is to be compensated by an amount equal to two days' pay of the inspector, the maximum amount which can be paid for any one night's service being two days' pay.

You are further advised that the amount collected for such night service should be deposited in a special deposit to the official credit of the collector, subject to his check, for payment to inspectors rendering the service, instead of depositing the amount to the credit of the Treasurer of the United States.

Respectfully, JAMES B. REYNOLDS, *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Portland, Me.*

(T. D. 28272.)

Payment of Treasury drafts and official checks of public disbursing officers.

[Circular No. 42.]

TREASURY DEPARTMENT, *June 22, 1907.*

The following sections of the Revised Statutes of the United States and the subsequent regulations are published for the information and guidance of all concerned:

SEC. 306. At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depositary of the United States, or upon any national bank designated as a depositary of the United States, and which shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities."

SEC. 308. The payee or the bona-fide holder of any draft or check, the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States.

SEC. 309. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit

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SEC. 310. The Treasurer, each assistant treasurer, and each designated depositary of the United States, and the cashier of each of the national banks designated as such depositaries, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and which may then have been outstanding and unpaid for three years and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee.

REGULATIONS.

1. Any Treasury draft, or any check drawn by a public disbursing officer still in service, which shall be presented for payment within three full fiscal years from its date, will be paid in the usual manner by the office or bank on which it is drawn, from funds to the credit of the drawer. Thus, any such draft or check issued on or after July 1, 1904, will be paid as stated above until June 30, 1908, and the same rule will apply for subsequent years.

Any such draft or check which has been issued for a longer period than three full fiscal years will be paid only by the settlement of an account in this Department, as provided in section 308, Revised Statutes, above published; and for this purpose the draft or check will be transmitted to the Secretary of the Treasury for the necessary action, or, if lost, proof of ownership and loss, and a bond of indemnity must be furnished.

2. At the close of business on every 30th day of June, the Treasurer, the several assistant treasurers, and national-bank depositaries will render to the Secretary of the Treasury, as required by section 310, also above published, a list of all disbursing officers' accounts still unclosed which have remained three fiscal years or more unchanged on the books of their respective offices or banks, either by debit or credit, giving in each case the name and official designation of the officer, the date when the account was opened, the date of last debit and last credit, and the balance remaining to his credit.

3. Every disbursing officer will, upon receipt of the statement of his disbursing account for the month of June of each year, from the office or bank in which his funds are kept, immediately make a return to the Secretary of the Treasury of all checks drawn by him which have been outstanding and unpaid for three full fiscal years on the 30th of June of that year, as also required by section 310, stating the number of each check, its date, amount; in whose favor, on what office or bank, and for what purpose drawn; the number of the voucher in payment of which it was drawn, and, if known, the residence of the payee, and inclose in said return all checks described therein which may be in his possession.

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4. Whenever any disbursing officer of the United States shall cease to act in that capacity, he will at once inform the Secretary of the Treasury whether he has any public funds to his credit in any office or bank, and, if so, what checks, if any, he has drawn against the same which are still outstanding and unpaid. Until satisfactory information of this character shall have been furnished, the whole amount of such moneys will be held to meet the payment of his checks properly payable therefrom.

In case of the death, resignation, or removal of any disbursing officer, checks previously drawn by him will be paid from the funds to his credit, unless such checks have been drawn more than four months before their presentation, or reasons exist for suspecting fraud. Any check previously drawn by him and not presented for payment within four months of its date will not be paid until its correctness shall have been attested by the Comptroller of the Treasury or his chief clerk.

6. If the object or purpose for which any check of a public disbursing officer is drawn is not stated thereon, as required by Departmental regulations, or if any reason exists for suspecting fraud, the office or bank on which such check is drawn will refuse its payment.

These regulations are intended to supersede those of April 16, 1903, on this subject.

GEORGE B. CORTELYOU, *Secretary.*

(T. D. 28273.)

Free entry of philosophical and scientific apparatus for certain institutions, under paragraph 638, act of July 24, 1897.

[Circular No. 43.]

TREASURY DEPARTMENT, *June 22, 1907.*

To collectors and other officers of the customs:

Department Circular 89 of August 8, 1903 (T. D. 24616), relative to the free importation of philosophical and scientific apparatus, etc., for certain societies and institutions, colleges, academies, schools, and seminaries of learning for the purposes specified in paragraph 638 of the act of July 24, 1897, is hereby superseded, and the following is promulgated in lieu thereof for the information and guidance of officers of the customs and others concerned.

GEORGE B. CORTELYOU, *Secretary.*

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1. Said paragraph provides as follows:

638. Philosophical and scientific apparatus, utensils, instruments, and preparations, including bottles and boxes containing the same, specially imported in good faith for the use and by order of any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy,

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school, or seminary of learning in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe. (T. D. 3186, T. D. 8059, T. D. 13824, T. D. 16042, and T. D. 16137.)

2. By the express provisions of said paragraph, compliance with such regulations as the Secretary of the Treasury shall prescribe is made a condition precedent to the right of free entry thereunder, and when such regulations are not complied with the entry should be liquidated as dutiable and duties at the regular rates collected.

3. In making entries under said paragraph the importer must file with his entry, in addition to the oath or declaration required by section 5 of the act of June 10, 1890, the oath or affidavit of a duly authorized executive officer of the institution, society, or association for which the articles are intended, substantially in the form (Cat. No. 612 A) hereinafter set forth; and in case such articles be imported through a dealer or other agent the oath or affidavit of such dealer or agent substantially in the form (Cat. No. 612 B) hereinafter set forth shall also be filed with the entry. Such oaths or affidavits must be actually produced at the time of entry and no bond for their subsequent production will be accepted.

4. Within six months after the date of entry there shall be filed with the collector a certificate signed by an authorized executive officer of the society or institution for which the importation was made showing that the articles named in the entry have been delivered to such society or institution, which certificate shall be substantially in the form (Cat. No. 38A) hereinafter set forth

Upon such certificate being filed the collector may order the liquidation of the entry free of duty, but in case of failure to file the same within six months of the date of entry duties at the regular rate should be liquidated and forthwith collected. The entry should not, however, be liquidated prior to the filing of such certificate or the expiration of six months from the date of entry.

5. In case duties should be collected upon articles entitled to free entry under the provisions of said paragraph either by reason of failure to comply with the regulations or by an erroneous classification upon liquidation of the entry, or otherwise, the importers have their remedy by protest under the provisions of section 14, act of June 10, 1890, but in case of failure to file such protest within ten days after liquidation of the entry no relief can be afforded by the collector or by the Department.

6. In construing the provisions of said paragraph 638, officers of the customs should be guided by the principles stated by the Board of United States General Appraisers in T. D. 24902 of January 12, 1904, and should inquire—

First. Are the articles imported in good faith by the order and for the use of one of the institutions named in the law and not for sale?

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Second. Are they intended to be used in philosophical or scientific investigation, research, demonstration, or instruction?

Third. Do they serve a useful purpose and are they necessary and especially appropriate in such investigation, research, demonstration, or instruction?

If all said questions may be answered in the affirmative the articles should be passed, upon compliance with the regulations, free of duty, but if any one of them must be answered in the negative, free entry should be denied.

7. While in determining the character of articles entitled to free entry, the provisions of said paragraph should have a generous and liberal construction, they should be strictly construed in determining the character of the institution seeking such privilege (T. D. 24902), and the collector may require a copy of the charter and other satisfactory evidence as to the character of the institution claiming the right of free entry under said paragraph.

8. Said paragraph contemplates the placing of orders abroad for articles to be specially imported for some specified society or institution of the character herein described, and the invoicing of goods for one institution and their withdrawal by another institution is manifestly incompatible therewith. (T. D. 23474.)

9. The Department has held that the Smithsonian Institution, the Naval Observatory, the Coast and Geodetic Survey, the Geological Survey, the Weather Bureau, the National Museum, Army and Navy Medical Museums, Military Academy at West Point, the Artillery School, Public Health and Marine-Hospital Service, National Bureau of Standards, Fish Commission, Scientific Bureaus of the Agricultural Department, the Naval Academy at Annapolis, and State boards of health are entitled to the privileges granted under the above paragraph. (T. D. 19010, T. D. 18156, and T. D. 18213.) Similar bureaus or institutions may have their right to the privilege of free entry under the provisions of said paragraph determined upon making application to the Department therefor.

10. A municipal corporation has been held not to be a society or institution within the meaning of said paragraph (T. D. 16230), and a hospital having a school of instruction attached has also been denied the right of free entry thereunder upon the ground that such an institution is not established solely for educational purposes or any of the other purposes therein mentioned. (T. D. 14637, T. D. 16355, T. D. 18708, and T. D. 18767.)

FORM 612 A.

STATE OF ——— }
COUNTY OF ——— } ss:

I, ——— ———, do solemnly swear that I am ——— ——— of the ———, located at ———, in the State of ———, and that the following articles hereinafter described and enumerated in the annexed entry were ordered by me ———, 190—, to be

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imported for the sole use of the said ——— as its permanent property, and not for sale or distribution, and that said articles are imported for the sole use and by the order of the said ——— as its permanent property.

And I do further swear that none of the said articles have been furnished to said ——— in anticipation or in exchange for similar articles to be imported, nor will any articles from any stock on hand or otherwise be received in exchange for or in lieu of the articles above mentioned.

——— ———,

———.

Personally appeared before me the said ———, known to me to be the identical person named in the foregoing affidavit and subscribed and made oath thereto.

Witness my hand and official seal this ——— day of ———, 190—.

[SEAL.] ——— ———,

Deputy Collector or Notary Public.

FORM No. 612 B.

I, ——— ———, of the firm of ——— ———, of ———, State of ———, do solemnly swear that the articles mentioned in the above affidavit and covered by the annexed entry were specially ordered for and are to be delivered to ——— and that they were imported by ——— in the ——— from ———, which arrived ———, and are covered by a consular invoice dated ———, and are contained in case ———, and that no articles previously imported free of duty under section 638 of the act of 1897 are to be received in exchange or in lieu of said articles, nor are the same to be subsequently returned or exchanged for articles to be hereafter imported.

——— ———,

——— ———.

Sworn to before me this ——— day of ——— 190—.

——— ———,

Deputy Collector or Notary Public.

FORM No. 38 A.

I, ——— ———, do hereby certify that I am ——— ——— of the ———. located at ——— ———, in the State of ———, and that the following articles, viz, ———, specially imported by ——— ——— for the sole use of said ——— ———, covered by entry No. ——, dated ———, on file in the custom-house at ——— ———, were delivered to said ——— at the ———; that said articles were not taken from a stock on hand in this country, and that the same are intended to be retained as the permanent property of said ———.

——— ———.

(T. D. 28274.)

Carnauba wax.

Appeal directed from decision of Board of United States General Appraisers of May 31, 1907, G. A. 6609 (T. D. 28220), involving the classification of Carnauba wax.

TREASURY DEPARTMENT, *June 22, 1907.*

SIR: The Department is in receipt of your letter of the 17th instant, inviting attention to the decision of the Board of United States General Appraisers of May 31 last, G. A. 6609 (T. D. 28220), wherein it was held that certain merchandise invoiced as Carnauba wax was free of duty under paragraph 695 of the tariff act as vegetable or mineral wax.

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As the issue is an important one, you are hereby directed to file an application for a review of the said decision, in accordance with the provisions of section 15 of the act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(47742.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28275.)

Chemical glassware.

Appeal directed from decision of Board of United States General Appraisers, Abstract 15582 (T. D. 28223), involving dutiable classification of volumetric flasks, Stohman's stopper flasks, etc.

TREASURY DEPARTMENT, *June 24, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers, Abstract 15582 (T. D. 28223), dated May 28, 1907, wherein it is held that certain "volumetric" flasks and Stohman's stopper flasks, also articles composed of blown glass and fitted with adjuncts of india rubber and other materials, are not dutiable as blown glassware at 60 per cent ad valorem under paragraph 100, but are properly dutiable as bottles under paragraph 99 and as manufactures of glass under paragraph 112, respectively.

In view of the importance of the issue, you are hereby directed to file an application for review, in accordance with the provisions of section 15 of the customs administrative act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,
(6772.) *Assistant Secretary.*
COLLECTOR OF CUSTOMS, *New York.*

(T. D. 28276—G. A. 6629.)

Cast-iron grinders not plates.

Cast-iron grinding disks, so called, in the shape of rings, from the surfaces of which project rows of teeth which have been sharpened and finished by machinery after the completion of the casting process, not being flat, nor of even surface or uniform thickness, are not plates in any known sense of that word, and are not dutiable under the provisions of paragraph 148, tariff act of 1897, but fall precisely within the terms of paragraph 193 as manufactured articles of iron not specially provided for.—Bromley *v.* United States (T. D. 28051) cited.

United States General Appraisers, New York, June 21, 1907.

In the matter of protest 229452 of Thos. Prosser & Son against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of ring-shaped grinders made of cast iron, the largest of which has an outside diameter of about 23⅝ inches, and an inside diameter of about 11 inches. The articles are thinner at the inner edge than at the outer, and from this beveled surface project a large number of teeth

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arranged in rows. Some of the rings have the teeth on both sides, and some have them on one side only. It appears from the testimony that these grinders are to form part of grinding mills, being mounted in pairs on a revolving shaft in such a manner that the teeth of one engage the teeth of its neighbor. The materials to be ground are fed in through a hopper and are crushed between the grinders to the required degree of fineness, this being accomplished by having the teeth finer as they approach the outer edge. The teeth have been sharpened and finished by machinery, and holes drilled and countersunk after the articles have been cast. The goods are of precisely the same description as those passed on in G. A. 6070 (T. D. 26478), on protests of the same importers, wherein the claim that they were dutiable as castings was overruled and the assessment of duty at 45 per cent under paragraph 193, tariff act of 1897, as manufactures of iron, was affirmed. Counsel for the importers now makes the somewhat belated discovery that the articles are "plates" and insists that they are dutiable at only eight-tenths cent per pound under paragraph 148.

At the hearing he based this contention strictly on the dictionary meaning of words, disclaiming any commercial designation, and to that end he read from the Standard Dictionary the first definition of the word disk:

> Any plane or surface that is flat and circular, or approximately so.

Also the seventh definition:

> Any flat circular plate, used often attributively, as disk armature, disk clutch, disk harrow, etc.

And asked the witness if the articles in question come within these definitions of disks, to which the reply was in the affirmative. Substantially, that was all the testimony offered in support of the protest; and it fails wholly to sustain the contention that these goods are "plates." They are described in the invoice as "grinding disks," and that has been the description of them since 1893, according to the witness. Turning, on our own account, to the dictionary, to ascertain the meaning given to the word "plate," for it is as plates the goods are claimed to be dutiable and not as disks, which are not mentioned in the tariff, we find in the Century:

> 1. A sheet of metal of uniform thickness and even surface.
> 2. A flat piece of metal to strengthen arms.

Webster:

> A piece of metal extended or flattened to an even surface with a uniform thickness. (A sheet of metal is thinner than a plate.)

Standard:

> 1. A flat, extended, rigid body, as of metal. * * *
> 2. A piece of flat metal. * * *

These articles possess not a single characteristic of those enumerated in the dictionaries quoted as belonging to plates. They are not

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flat, they are not of uniform thickness, and they have not an even surface. If they had they would not be the articles before us but something else; and it is simply a misuse of terms to call these toothed grinders "plates." On these authorities, and in the sense of the term as it is ordinarily understood—and as already stated, it is on the ordinary meaning of words that importers' counsel relies—we find that the goods are not plates. Having been advanced from the condition of castings by processes of manufacture, we hold that they fall within the terms of paragraph 193 as manufactured articles of iron not specially provided for, and are dutiable thereunder as assessed. Note Bromley *v.* United States, circuit court for the eastern district of Pennsylvania, February 28, 1907, reported in T. D. 28051.

The protest is overruled and the decision of the collector affirmed.

(T. D. 28277—G. A. 6630.)

Decalcomania transfers.

Decalcomanias printed lithographically from stone, and used to transfer a decorative picture, figure, or design, to the surface of various articles, are lithographic prints, and they are held accordingly to be properly dutiable as such, under the provisions of paragraph 400, tariff act of 1897, at the appropriate rate therein provided, following Arthur *v.* Moller (97 U. S., 365; 7 Otto), decisions of the Board, and uniform customs practice of at least thirty years.

United States General Appraisers, New York, June 25, 1907.

In the matter of protest 243971 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise in question consists of so-called "delcalcomanias." The local appraiser returned the same as "surface-coated paper, printed," and duty was assessed thereon at the rate of 3 cents per pound and 20 per cent ad valorem under the provisions of paragraph 398, tariff act of 1897. The importers claim that said merchandise is properly dutiable at the rate of 20 cents per pound, as lithographic prints, under the provisions of paragraph 400 of said act.

The importers failed to appear at the hearing, and offered no evidence or testimony to sustain their contention or in support of the protest. There was therefore no person present to offer objection to the admission of a mass of testimony which was neither admissible, material, nor pertinent to the issue. A decalcomania is produced by printing lithographically upon either single or duplex transfer paper. Such paper, prior to the printing, is not a surface-coated paper, and its return as a surface-coated paper, printed, is therefore manifestly untenable. There is, likewise, no evidence before us that decalcomanias are known commonly or commercially as surface-coated paper.

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On the hearing before this Board, special counsel, representing the "Meyercord Company," a Chicago corporation engaged in making decalcomanias, which seeks to have a high rate imposed upon such merchandise when imported, contended that neither the rate of duty assessed by the collector, nor the rate claimed by these importers is correct, but that by reason of the fact that mineral colors are used in printing the articles they should be assessed with duty at the rate of 45 per cent ad valorem, as manufactures in chief value of metal, under the provisions of paragraph 193 of the tariff. This proposition so advanced and contended for on the part of the Government is utterly groundless and upon principle must be rejected. Even if, as it is claimed, decalcomanias are not lithographic prints, they would be dutiable as printed matter and not as articles according to component materials. As long as thirty years ago the Supreme Court of the United States, in the case of Arthur *v.* Moller (97 U. S., 365; 7 Otto), held to that effect. Mr. Justice Hunt, writing the opinion of the court, said:

> It is not necessary, however, that the characters produced should be letters or numerals, or the result of types or stereotypes, or be reading matter, but the term "print" or "printing" includes the most of the forms of figures or characters or representations, colored or uncolored, that may be impressed on a yielding surface. * * * The pictures in question were printed from lithographic stones by successive impressions, each impression giving a different portion of the view and of a different color. Like other pictures, they are made and used for the purpose of ornament. Equally with engravings, copperplates, and lithographs they are printed and properly fall within the statutory designation of printed matter.

The above ruling disposes of the claims that decalcomanias are not lithographic prints, and that they should be dutiable as manufactured articles, according to the chief component material. Since that decision Congress, in the acts of 1890, 1894, and 1897, provided for lithographic prints specifically and at a distinct rate from other printed matter, and the classification of decalcomanias as lithographic prints has been uniformly observed by the courts, this Board, and classifying officers, for the past thirty years, with one exception. That exception was in the ruling handed down in the case of Wakem *v.* United States in the northern district of Illinois (T. D. 25827), wherein, in an action brought by an importer to compel the collector to assess a higher rate of duty than that which was assessed, the court held that the decalcomanias were properly dutiable at the rate of 50 cents per pound under the provisions of paragraph 400, a rate imposed only on "lithographic cigar labels." The real importer in that case was the "Meyercord Company," the same concern which figures so prominently in the case at bar on the Government side. The decision in the Arthur case (*supra*) has been uniformly followed by this Board ever since it was handed down. G. A. 1941 (T. D. 13703); G. A. 5445 (T. D. 24723).

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This long-established rule is in itself sufficient to effectually determine this case, but in addition thereto it may be observed that the testimony before us absolutely confirms it. The articles are lithographic prints made on a lithographic press, printed from lithographic stone, and prepared by a lithographer. It may also be recited that Judge Platt recently held in Knauth *v.* United States (T. D. 28184) that the term "lithographic prints" had no definite, general, and uniform understanding in trade and commerce. We find accordingly that decalcomanias are in fact lithographic prints.

Our attention is called in the Government's brief to the fact that the rate provided in paragraph 400 is inadequate to protect domestic interests against foreign competition, and counsel asserts that it is fair to assume that Congress did not have decalcomanias directly in mind when it framed the act of 1897. A reference to tariff hearings before the Ways and Means Committee of the Fifty-fourth Congress, which passed the said tariff act, at page 1780, shows that the attention of Congress was specially called to the question of decalcomanias by the "Meyercord Company," the same concern which figures in this case and in the Wakem case (*supra*), and inasmuch as Congress did not provide for decalcomanias by name it naturally follows that that body considered the rate of duty assessed on that class of merchandise for many years as sufficient.

The protest is sustained and the decision of the collector reversed.

(T. D. 28278.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15793.—Linen-Thread Waste.—Protests 230425, etc., of Gatti-McQuade Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 5719 (T. D. 25422), relating to linen-thread waste.

No. 15794.—Preserved Pineapples.—Protests 91917*f*, etc., of J. S. Johnson Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of United States *v.* Johnson (T. D. 27830), relating to preserved pineapples.

No. 15795.—Waste Bagging—Rags.—Protests 57232*f*, etc., of Train-Smith & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 14, 1907. Opinion by Somerville, G. A.

G. A. 6562 (T. D. 28031) followed, relating to waste bagging and rags, the protests being sustained in part.

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No. 15796.—PROTESTS ABANDONED.—Protest 253824 of Brooks Brothers, protests 249708, etc., of Continental Color and Chemical Company, and protests 250313, etc , of Sun Kwong On *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinions by Lunt, G. A.

Protests abandoned.

No. 15797.—PROTESTS ABANDONED.—Protests 244016, etc., of Morris Gugenheim *et al.* and protests 218314, etc., of B. Blumenthal & Co. *et al.* Before Board 2. Opinions by Fischer, G. A.

Same as No. 15796 (*supra*).

No. 15798.—PROTEST ABANDONED.—Protest 244225 of A. S. Rosenthal Company. Before Board 2. Opinion by De Vries, G. A.

Same as No. 15796 (*supra*).

No. 15799.—PROTESTS UNSUPPORTED.—Protests 181875, etc., of H. B. Claflin Company *et al.*, protest 234703 of Freund, Foise & Co., protests 84852*f*, etc., of J. & H. Rosenberg *et al.*, protests 197744, etc., of F. Schulemann Company *et al.*, protests 67956*f* of Spiegelberg & Co., protests 244265, etc., of A. Steinhardt & Bro., protest 170183, etc., of Sundheimer Brothers *et al.*, and protest 195015 of Anton Wedl against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 14, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 15800.—PROTESTS UNSUPPORTED.—Protest 246426 of Henry Stern and protests 247073, etc., of Imperial Braid Company *et al.* Opinions by Howell, G. A.

Same as No. 15799 (*supra*).

No. 15801.—PROTESTS UNSUPPORTED.—Protests 245568, etc., of W. H. Lloyd Company *et al.*, protests 247864, etc., of Schall & Co. *et al.*, protest 248087 of M. Gugenheim, and protest 248506 of Hensel, Bruckmann & Lorbacher. Opinions by Fischer, G. A.

Same as No. 15799 (*supra*).

No. 15802.—PROTESTS UNSUPPORTED.—Protests 244786, etc., of Hensel, Bruckmann & Lorbacher *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 14, 1907. Opinion by McClelland, G. A.

Protests overruled for want of merit.

No. 15803.—PROTEST UNSUPPORTED.—Protest 251695 of J. G. Bennett & Co against the assessment of duty by the surveyor of customs at the port of Pittsburg. Opinion by Lunt, G. A.

Same as No. 15802 (*supra*).

No. 15804.—LEAF TOBACCO.—Protest 257407 of Carlos Garcia & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by Lunt, G. A.

Bale 126 was found to contain 90 per cent of filler tobacco, and the assessment thereon was modified accordingly.

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No. 15805.—Wool Powder Puffs.—Protest 187115 of Geo. A. Paturel and protests 180792, etc., of Martin & Bowne Company against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinions by Lunt, G. A.

Protests overruled on the authority of G. A. 6611 (T. D. 28222), relating to wool powder puffs.

No. 15806.—Imitation Precious Stones—Malachite.—Protests 242301, etc., of E. A. Bliss Company against the assessment of duty by the collector of customs at the port of New Haven. Before Board 1, June 17, 1907. Opinion by Sharretts, G. A.

Paste imitations of malachite were held dutiable as imitation precious stones under paragraph 435, tariff act of 1897, as claimed by the importers.

No. 15807.—Imitation Pearls—Buckles.—Protests 102761, etc., of Nordlinger & Mamluck *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by Sharretts, G. A.

As claimed by the importers, imitation pearls were held dutiable as imitation stones and belt buckles as manufactures of metal. G. A. 6088 (T. D. 26554) and G. A. 6374 (T. D. 27382) followed. Assessment affirmed in other respects.

No. 15808.—Strung Beads.—Protests 93392, etc., of Morris Goldberg *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of Frankenberg Company *v.* United States (T. D. 28189), relating to strung beads.

No. 15809.—Strung Beads.—Protests 178756, etc., of A. Lorsch & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of Frankenberg Company *v.* United States (T. D. 28189), relating to strung beads.

No. 15810.—Foil-Backed Jewels.—Protests 270917*h*, etc., of Morris Goldberg against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by Sharretts, G. A.

G. A. 6380 (T. D. 27420) followed, relating to foil-backed jewels.

No. 15811.—Almond Meal.—Protests 229427, etc., of Geo. Lueders & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 17, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6555 (T. D. 27965), relating to almond meal.

No. 15812.—Post-Card Albums.—Protests 221544, etc., of A. Steinhardt & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 17, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 5952 (T. D. 26099), relating to post-card albums.

No. 15813.—Pictorial Post Cards.—Protests 246967, etc., of August Stroofer *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 17, 1907. Opinion by Fischer, G. A.

Pictorial post cards were held to have been properly classified as printed matter under paragraph 403, tariff act of 1897.

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No. 15814.—PICTORIAL POST CARDS.—Protest 244989 of A. Selige Publishing Company against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 15813 (*supra*).

No. 15815.—SILK HOSIERY.—Protest 247559 of Wyman, Partridge & Co. against the assessment of duty by the collector of customs at the port of Minneapolis. Before Board 2, June 17, 1907. Opinion by Howell, G. A.

Hosiery classified as cotton was found to be composed in chief value of silk, as claimed by the importers.

No. 15816.—WAFERS.—Protests 248235, etc., of Lathrop Company against the assessment of duty by the collector of customs at the port of Hartford. Before Board 3, June 17, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of G. A. 6591 (T. D. 28172), relating to wafers.

No. 15817.—WAFERS.—Protest 200885 of Pacific Coast Biscuit Company against the assessment of duty by the collector of customs at the port of Port Huron.

Same as No. 15816 (*supra*).

No. 15818.—WAFERS.—Protests 144977, etc., of Jas. A Hayes & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15816 (*supra*).

No. 15819.—WAFERS.—Protests 136416–18880, etc., of C. Jevne & Co. *et al.* against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15816 (*supra*).

No. 15820.—WAFERS—COVERINGS.—Protests 149962, etc., of Chas. M. Decker & Bro. against the assessment of duty by the collector of customs at the port of Newark.

Wafers were held dutiable as unenumerated articles under section 6, tariff act of 1897, as claimed by the importers. G. A. 6591 (T. D. 28172) followed.

WAITE, *General Appraiser:* * * * It will follow as a mere incident of the change in classification that the immediate coverings (together with the outer coverings) will be subject to duty at the rate imposed upon the merchandise, to wit, 35 per cent ad valorem, and no greater rate, and that, where the amount of duty collected upon the coverings exceeds what would be due when computed at the rate of 20 per cent upon both inside and outside coverings, all such excess will be refunded.

No. 15821.—DRIED FUNGUS—SEAWEED.—Protests 62120*b*, etc., of Kwong Lee Tai *et al.* against the assessment of duty by the collector of customs at the port of Portland, Oreg. Before Board 3, June 17, 1907. Opinion by Waite, G. A.

As claimed by the importers, dried fungus was held to be dutiable under paragraph 257, tariff act of 1897, as a vegetable in its natural state (note G. A. 6184; T. D. 26[illegible]) and seaweed was held free of duty under paragraph 617. G. A. 5258 (T. D. 24[illegible]) followed. In all other respects the protests were overruled.

No. 15822.—PROTESTS FILED TOO LATE.—Protests 247895, etc., of Forino Company *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

Protests overruled because not filed in due time.

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No. 15823.—MOISTURE IN WOOD PULP.—Protest 218294 of Illinois Central Railroad Company against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

The Board overruled the importers' contention for an allowance for moisture in wood pulp. Note G. A. 6114 (T. D. 26611).

No. 15824.—WOOD PULP—WOOD SCREENS.—Protests 229324, etc., of Sault Ste. Marie Pulp and Paper Company against the assessment of duty by the collector of customs at the port of Marquette. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

The Board held ground wood screenings to have been properly classified as wood pulp under paragraph 393, tariff act of 1897. Abstract 14559 (T. D. 27945) followed.

No. 15825.—MOISTURE IN WOOL.—Protests 226056, etc., of Brown & Adams *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

The Board overruled the importers' contention for an allowance of moisture in wool. G. A. 6512 (T. D. 27800) followed.

No. 15826.—GAUGE OF OLIVE OIL.—Protest 229484 of Sobrinos de Yzquierdo y Ca. against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 6575 (T. D. 28072), relating to the gauge of olive oil.

No. 15827.—GAUGE OF OLIVE OIL.—Protests 215666, etc., of Granucci Brothers *et al.* against the assessment of duty by the collector of customs at the port of San Francisco.

Same as No. 15826 (*supra*).

No. 15828.—WASTE BAGGING—RAGS.—Protests 2670 *h*, etc., of A. Salomon against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

G. A. 6603 (T. D. 28202) followed, relating to waste bagging and rags.

No. 15829.—ROTTEN FRUIT.—Protests 231807, etc., of John Maniscalco *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 17, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of United States *v.* Courtin (T. D. 27970), relating to fruit destroyed by health officers.

No. 15830.—SCIENTIFIC INSTRUMENTS—MINNESOTA STATE DAIRY AND FOOD COMMISSION.—Protest 224277 of State Dairy and Food Commission against the assessment of duty by the collector of customs at the port of St. Paul. Before Board 3, June 17, 1907. Opinion by Hay, G. A.

It was contended that a scientific instrument imported by the Minnesota State Dairy and Food Commission was entitled to admission free of duty under paragraph 638, tariff act of 1897, relating to scientific articles imported for institutions established "solely" for educational and scientific purposes. Protest overruled.

HAY, *General Appraiser:* The Minnesota State Dairy and Food Commission is not a college, nor an academy, nor a school, nor a seminary of learning, nor is it a State or public library. We are brought, then, to the inquiry as to whether or not it is incorporated solely for any of the purposes named in the law. The only contention made

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at the hearing was that it was incorporated partially for educational purposes, for it could not be and is not contended that it was incorporated for religious purposes, philosophical purposes, or literary purposes, and, except in the broadest use of that term, it could not be said to be incorporated for scientific purposes. An examination of the act creating the commission we think is decisive of the question. It certainly was not incorporated *solely* for educational purposes, and that it must have been in order to have the benefit of the act. While the work of the commission is unquestionably educational in its character, just as the wise and proper administration of every function of government is in a measure educational, the commission's chief function, if not its sole function, is that of the inspection of food products in order to save the public from the use of adulterated, noxious, and dangerous food. It is created as an arm of the government of the State of Minnesota in the exercise of that police power which is one of the chief functions of every government, and is not, we think, such an institution as is contemplated by paragraph 638. In this respect it differs from agricultural experiment stations existing in many of the States, in that their sole function is the scientific investigation of plant life and animal life for the purpose of promoting agriculture.

No. 15831.—UNUSUAL COVERINGS—ADDITIONAL DUTY.—Protests 186884, etc., of J. Bernheim & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 17, 1907.

HAY, *General Appraiser:* The invoice in this case was for certain cigars and did not include the value of the unusual coverings which incased them. The appraiser added to the invoice a sufficient amount to include the value of the unusual coverings and the collector assessed additional duty. The protestants contend that the advance on the invoice is not a *per se* advance, but a direction to assess duty on the unusual coverings, claiming that the cabinets are goods in excess.

Section 19 of the act of June 10, 1890, known as the customs administrative act, contains the following provision:

SEC. 19. * * * If there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported.

This Board held in Park & Tilford's case, G. A. 6111 (T. D. 26608), that this did no provide for cumulative or double duty, and that it was error to assess an unusual covering both as a part of the value of the merchandise under the first part of that section (not here quoted) and under the provision quoted also—that is, that the collector should not add the value of a cigar box which was an unusual covering to the value of the cigars and assess duty thereon under paragraph 217 and also assess duty upon the unusual covering as a manufacture of wood. The United States circuit court, in United States *v.* Park (142 Fed. Rep., 202; T. D. 26973) affirmed the Board, but that decision was reversed by the circuit court of appeals in United States *v.* Park (T. D. 27833), where it was held that such was contemplated by the law.

Paragraph 217 of the tariff act of 1897, therefore, must be read as if the provision of section 19 above quoted, as interpreted by the circuit court of appeals, was part of it whenever cigars are imported in unusual coverings. It is therefore the duty of the appraiser, when cigars are imported in unusual coverings that are not included in the entered value, to advance the same so as to make the value of the cigars equal to the value of the cigars and of the coverings, and to also place a value upon the coverings. It is the duty of the collector in liquidating the entry to collect duty upon the value of the cigars thus appraised under paragraph 217 and also upon the value of the coverings under the appropriate paragraph of the law.

This case differs from Alessi's case, G. A. 5405 (T. D. 24622), in that there the collector assumed to invoice and appraise the merchandise. Certain merchandise in

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excess of the amount invoiced was found in the package in which the invoiced merchandise was contained, and upon this excess the collector (not the appraiser) placed a value and assessed additional duty under section 32. This the Board held he had not authority to do.

The protest is overruled and the action of the collector affirmed.

No. 15832.—Clerical Error—Shortage.—Protest 248149 of Edward Bach against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 17, 1907. Opinion by Hay, G. A.

The importer claimed an allowance for shortage of hardware due to clerical error by the shippers. Protest sustained.

No. 15833.—Protests Abandoned.—Protests 230313, etc., of R. B. MacLea Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 17, 1907. Opinion by Howell, G. A.

Protests abandoned.

No. 15834.—Protests Unsupported.—Protest 230509 of Julius Loewenthal & Co., protest 244623 of Mack, Opper & Co., protests 224129, etc., of Rosenblum & Sentner, protest 248588 of Rusch & Co., protest 244272 of Henry Stern, and protests 244094, etc., of P. K. Wilson & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 17, 1907. Opinions by Howell, G. A.

Protests overruled for want of merit.

No. 15835.—Protests Unsupported.—Protests 244921, etc., of P. W. Lambert & Co. *et al.* Opinion by Fischer, G. A.

Same as No. 15834 (*supra*).

No. 15836.—Protests Unsupported.—Protest 247946 of Githens, Rexsamer & Co., protests 252906, etc., of Larini, Cavallaro & Co. *et al.*, and protest 246727 of F. W. Woolworth & Co. Before Board 1. Opinions by McClelland, G. A.

Same as No. 15834 (*supra*).

No. 15837.—Protests Unsupported.—Protest 248182 of G. W. Sheldon & Co. and protest 229725 of Winter & Smillie. Before Board 3. Opinions by Somerville, G. A.

Same as No. 15834 (*supra*).

No. 15838.—Protests Unsupported.—Protest 242179 of Isler & Guye. Before Board 3. Opinion by Hay, G. A.

Same as No. 15834 (*supra*).

No. 15839.—Protest Unsupported.—Protest 217584 of P. W. Bellingall against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3. Opinion by Hay, G. A.

Same as No. 15834 (*supra*).

No. 15840.—Greenhouse Stock—Cycas Clumps.—Protest 211757 of Henry & Lee against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 18, 1907.

The protest related to merchandise assessed with duty under paragraph 251, tariff act of 1897, and claimed to be free of duty under paragraph 548 (drugs), paragraph 552 (palm leaf), paragraph 566 (crude fibrous vegetable substances), or paragraph 617 (crude vegetable substances). Protest overruled.

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McCLELLAND, *General Appraiser:* The special report of the appraiser accompanying this protest states that the merchandise consists of "cycas stems." He further states that "the plants themselves are imported in the shape of dormant trunks or clumps, which are potted and subjected to heat, thus producing root and leaf growth. * * * As the cycas palm can not be transported from the Orient, it is removed from earth, the leaves and roots are allowed to dry off and when this is accomplished the clump or trunk is shipped. * * *

Counsel for importers have indorsed on the papers the following:

Submitted on appraiser's report with request for favorable decision. Paragraph 251 provides only for various sorts of bulbs, bulbous roots, and corms, which these are not.

We have carefully considered the provisions of each of the said paragraphs relied upon by protestants for free entry, but fail to find any one of them that could reasonably be held to cover the merchandise in question; and therefore each of the claims is overruled. Thus it only remains to determine whether the collector's classification under paragraph 251 was the correct one. It may be open to question whether the cycas palm "dried off," with the leaves removed, is a palm within the meaning of the language of said paragraph 251; and we think it unnecessary to decide that question, since if it is not it is certainly greenhouse stock not specially provided for, under the provisions of paragraph 252 of said act, dutiable at the same rate assessed in this case by the collector.

No. 15841.—OLIVE OIL.—Protest 247645 of Marchesini Brothers against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 18, 1907. Opinion By McClelland, G. A.

The Board sustained the importers' contention that the merchandise is free of duty under paragraph 626, tariff act of 1897, as olive oil fit only for mechanical or manufacturing purposes.

No. 15842.—WAFERS.—Protests 204827, etc., of Sealy, Mason & Co. *et al.* against the assessment of duty by the collector of customs at the port of Portland, Oreg. June 18, 1907.

Same as No. 15816 (*supra*).

No. 15843.—WAFERS.—Protests 197329, etc., of R. L. Christian & Co. against the assessment of duty by the collector of customs at the port of Richmond. June 18, 1907.

Same as No. 15816 (*supra*).

No. 15844.—WASTE BAGGING—RAGS.—Protests 41566 *b*, etc., of Train-Smith Company against the assessment of duty by the collector of customs at the port of Boston. June 18, 1907.

Same as No. 15828 (*supra*).

No. 15845.—WASTE BAGGING—RAGS.—Protests 52413 *f*, etc., of James Pirnie against the assessment of duty by the collector of customs at the port of New York. June 18, 1907.

Same as No. 15828 (*supra*).

No. 15846.—WOOL POWDER PUFFS.—Protests 250500, etc., of Abraham & Strauss *et al.*, protests 199398, etc., of Geo. Borgfeldt & Co., and protests 188768, etc., of Park & Tilford *et al.* June 20, 1907.

Same as No. 15805 (*supra*).

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No. 15847.—Wool Powder Puffs.—Protests 201928–21501, etc., of Marshall Field & Co. against the assessment of duty by the collector of customs at the port of Chicago. June 20, 1907.

Same as No. 15805 (*supra*).

No. 15848.—Strung Beads.—Protests 250526, etc., of S. A. Frost's Son, protests 132580, etc., of Morris Goldberg *et al.*, protests 4620*h*, etc., and 62140*f*, etc., of Louis Metzger & Co. *et al.*, protests 149555, etc., of H. Schmalhausen *et al.*, protests 157999, etc., of A. Steinhardt & Bro. *et al.*, protests 90700*f*, etc., of Samstag & Hilder Brothers *et al.*, protests 148760, etc., and protests 48548*f*, etc., of H. Wolff & Co. *et al.* June 20, 1907.

Same as No. 15809 (*supra*).

No. 15849.—Strung Beads.—Protests 120954, etc., of John Wanamaker against the assessment of duty by the collector of customs at the port of Philadelphia. June 20, 1907.

Same as No. 15809 (*supra*).

No. 15850.—Wax Beads.—Protests 155130, etc., of Cohn & Rosenberger, protests 23699*h*, etc., of H. E. Frankenberg Company *et al.*, protest 246879 of L. Heller & Son, and protests 4082*h*, etc., of L. Metzger & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by Sharretts, G. A.

The protests were sustained in part on the authority of G. A. 6625 (T. D. 28254), relating to wax beads.

No. 15851.—Wax Beads.—Protests 5445*h*, etc., of Samstag & Hilder Brothers *et al.* and protests 3297*h*, etc., of A. Steinhardt & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by Sharretts, G. A.

G. A. 6610 (T. D. 28221) and G. A. 6625 (T. D. 28254) followed, relating, respectively, to strung beads and to wax beads.

No. 15852.—Coral—Precious Stones.—Protests 198927, etc., of American Bead Company *et al.* and protests 166834, etc., of Isaacs, Vought & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by Sharretts, G. A.

Protests sustained on the authority of G. A. 6584 (T. D. 28131), relating to various forms of coral held dutiable as precious stones under paragraph 435, tariff act of 1897.

No. 15853.—Mother-of-Pearl Slabs.—Protests 250004, etc., of A. Kastor & Bro. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6515 (T. D. 27823), relating to mother-of-pearl slabs.

No. 15854.—Foil-Backed Jewels.—Protests 132638, etc., of A. Steinhardt & Bro. *et al.* and protest 246723 of B. Ullmann & Co. June 20, 1907.

Same as No. 15810 (*supra*).

No. 15855.—Toy Jewelry.—Protest 248282 of M. D. Levy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of Abstract 10046 (T. D. 27114), relating to toy jewelry.

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No. 15856.—FOIL-BACKED JEWELS—STRUNG BEADS.—Protests 101673, etc., of H. Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

G. A. 6380 (T. D. 27420) and Frankenberg *v.* United States (T. D. 28189) followed, relating, respectively, to foil-backed jewels and to strung beads.

No. 15857.—SPANGLED GOODS.—Protests 183728, etc., of Samuel Schiff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6323 (T. D. 27240), relating to spangled goods.

No. 15858.—FAN CHAINS OF RICE-PASTE BEADS.—Protest 250770 of John V. A. Cattus against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

The protest related to fan chains composed in chief value of rice paste or dough rolled to the diameter of seed beads around a cotton thread. The importer contended that these articles had been improperly classified as jewelry under paragraph 434, tariff act of 1897, asserting them to be dutiable as toys under paragraph 418. This contention was overruled, the Board holding that the articles are not jewelry, and on the authority of G. A. 6628 (T. D. 28257) that they should have been classified as beaded articles by similitude under paragraph 408.

No. 15859.—STRUNG BEADS—SPANGLED ARTICLES.—Protests 67322*f*, etc., of L. Metzger & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6323 (T. D. 27240) and G. A. 6610 (T. D. 28221), relating, respectively, to spangled articles and to strung beads.

No. 15860.—PINS—ORNAMENTS.—Protests 12241*h*, etc., of Bamberger, Stern & Co. *et al.* and protests 243992, etc., of Dieckerhoff, Raffloer & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by Sharretts, G. A.

The protests were sustained to the extent authorized by G. A. 6139 (T. D. 26679) and G. A. 6374 (T. D. 27382), relating to pins and ornaments classified as jewelry.

No. 15861.—ORNAMENTS—PINS—STRUNG BEADS—CORAL—FOIL-BACKED JEWELS—WAX BEADS.—Protests 46755*f*, etc., of B. Altman & Co. and protests 127906, etc., of H. Wolff & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by Sharretts, G. A.

The importers' contentions were sustained to the extent authorized by the following decisions: G. A. 6394 (T. D. 27382), G. A. 6139 (T. D. 26679), Abstract 5635 (T. D. 26248), Tiffany *v.* United States (T. D. 26316), Frankenberg Company *v.* United States (T. D. 28189), G. A. 6380 (T. D. 27420), G. A. 6584 (T. D. 28131), and G. A. 6625 (T. D. 28254), relating, respectively, to ornaments, pins, and other articles classified as jewelry; to strung beads, foil-backed jewels, wax beads, cut coral, etc.

No. 15862.—LEATHER HEEL LIFTS.—Protest 252674 of A. J. Bolton Company against the assessment of duty by the collector of customs at the port of Rochester. Before Board 1, June 27, 1907. Opinion by McClelland, G. A.

The protests related to leather heel lifts, consisting of pieces of leather cut into shape for use in building heels for shoes. By virtue of the proviso in paragraph 438, tariff act of 1897, these articles were held to have been properly classified as manufactures of leather under paragraph 450.

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No. 15863.—MOCHA SHEEPSKINS.—Protests 132040, etc., of Goat and Sheepskin Import Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of Goat and Sheepskin Import Company *v.* United States (T. D. 28190).

No. 15864.—OLIVE OIL.—Protest 250108 of V. Barbera. June 20, 1907.

Same as No 15841 (*supra*).

No. 15865.—SEA MOSS.—Protest 252101 of R. Lindheim against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by McClelland, G. A.

As claimed by the importer, the merchandise was held dutiable as sea moss under paragraph 81, tariff act of 1897.

No. 15866.—GLOVES.—Protest 246465 of Hunter & Hunter against the assessment of duty by the collector of customs at the port of Detroit. Before Board 1, June 20, 1907. Opinion by McClelland, G. A.

Gloves classified as kid were claimed to be lamb gloves. Assessment affirmed.

No. 15867.—STEEL POINTS.—Protest 244606 of Morris Goldberg against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 14968 (T. D. 28074), relating to steel points.

No. 15868.—COLD-ROLLED STEEL.—Protests 60351 *b*, etc., of Edgar T. Ward & Sons and protests 123127, etc., of Wetherell Brothers against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, June 20, 1907. Opinions by Fischer, G. A.

Protests sustained on the authority of United States *v.* Crucible Steel Company (T. D. 28106), relating to cold-rolled steel strips.

No. 15869.—COLD-ROLLED STEEL.—Protests 175207, etc., of Strouse, Adler & Co. against the assessment of duty by the collector of customs at the port of New Haven.

Same as No. 15868 (*supra*).

No. 15870.—POST-CARD ALBUMS.—Protests 231173, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. June 20, 1907.

Same as No. 15812 (*supra*).

No. 15871.—ELASTIC BELTINGS.—Protests 223849, etc., of Stix, Baer & Fuller Dry Goods Company against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 20, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6498 (T. D. 27780), relating to elastic beltings.

No. 15872.—SILK FABRICS.—Protest 244197 of W. The. Losen against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinion by Howell, G. A.

The Board sustained the importer's contention that fabrics classified as containing more than 30 per cent in weight of silk in fact contained only 28.5 per cent.

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No. 15873.—FEATHERSTITCH BRAIDS.—Protests 244681, etc., of A. Strauss & Co against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of Vom Baur *v.* United States, G. A. 5744 (T. D. 25480), relating to featherstitch braids.

No. 15874.—FLAX FABRICS—MANUFACTURES OF COTTON.—Protests 182319, etc. of Andrew R. Steven *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinion by De Vries, G. A.

Protests sustained in part, a portion of the goods being held dutiable as manufactures of flax weighing less than 4½ ounces per square yard under paragraph 346, tariff act of 1897, and a portion as manufactures of cotton under paragraph 322.

No. 15875.—PROTEST INSUFFICIENT.—Protest 185318 of Peter Sharp & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinion by De Vries, G. A.

It appeared that the merchandise had been improperly classified; but as the importers failed to make the correct contention the protest was overruled.

No. 15876.—FIGURED COTTON CLOTH.—Protests 258128, etc., of Alms & Doepke Company against the assessment of duty by the surveyor of customs at the port of Cincinnati. Before Board 2, June 20, 1907. Opinion by De Vries, G. A.

Protests overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15877.—WAFERS.—Protests 125004, etc., of J. R. Newberry & Co. *et al.* against the assessment of duty by the collector of customs at the port of Los Angeles.

Same as No. 15816 (*supra*).

No. 15878.—APRICOT KERNELS.—Protest 125011 of McLellan & Brigham Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 20, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of United States *v.* Spencer (151 Fed. Rep. 1022; T. D. 27893), relating to apricot kernels.

No. 15879.—DRIED MUSHROOMS.—Protests 172654, etc., of Quong Yuen Shing & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 20, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of Choy Chong Woh & Co. *v.* United States (T. D. 28053), relating to dried mushrooms.

No. 15880.—HOUSEHOLD EFFECTS—IMMIGRANT'S TEAM.—Protest 231658 of Wm. Greig against the assessment of duty by the collector of customs at the port of Newport, Vt. Before Board 3, June 20, 1907. Opinion by Hay, G. A.

Four horses used abroad by a Canadian immigrant for more than one year, which he intended to use on a farm purchased in this country, were held free of duty under paragraph 504, tariff act of 1897, relating to household effects in use more than one year abroad.

No. 15881.—BALATA.—Protest 247384 of S. H. Dodd against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 20, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of Earle *v.* United States (T. D. 27977), relating to balata.

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No. 15882.—PAPER MASKS.—Protest 246438 of R. Tuck & Sons Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 20, 1907. Opinion by Hay, G. A.

Paper masks were held to have been properly classified under paragraph 451, tariff act of 1897, relating to masks.

No. 15883.—PETROLEUM PRODUCTS.—Protest 244101 of White Tar Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 20, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of United States *v.* Downing (T. D. 27025), relating to petroleum products.

No. 15884.—PROTEST ABANDONED.—Protest 127616 of Colby & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinion by Lunt, G. A.

Protest abandoned.

No. 15885.—PROTESTS ABANDONED.—Protests 227210, etc., of John V. A. Cattus *et al.* and protests 246389, etc., of Reed & Keller *et al.* Opinions by McClelland, G. A.

Same as No. 15884 (*supra*).

No. 15886.—PROTESTS ABANDONED.—Protests 235904*f*, etc., of Morris Goldberg. Opinion by Sharretts, G. A.

Same as No. 15884 (*supra*).

No. 15887.—PROTESTS ABANDONED.—Protests 202268, etc., of Guthman, Solomons & Co. Before Board 2. Opinion by Howell, G. A.

Same as No. 15884 (*supra*).

No. 15888.—PROTESTS ABANDONED.—Protests 221948–23342, etc., of International Forwarding Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3. Opinion by Somerville, G. A.

Same as No. 15884 (*supra*).

No. 15889.—PROTESTS UNSUPPORTED.—Protests 178456, etc., of E. F. Darrell & Co., protest 225373 of J. W. Hampton, Jr., & Co., and protests 252272, etc., of Nairn Linoleum Company against assessment of duty by the collector of customs at the port of New York. Before Board 1, June 20, 1907. Opinions by McClelland, G. A.

Protest overruled for want of merit.

No. 15890.—PROTEST UNSUPPORTED.—Protest 251690 of M. J. Hogan against the assessment of duty by the collector of customs at the port of Milwaukee.

Same as No. 15889 (*supra*).

No. 15891.—PROTESTS UNSUPPORTED.—Protests 187734, etc., of M. J. Corbett & Co. *et al.*, protests 23934*h*, etc., of H. E. Frankenburg Company *et al.*, protests 247647 of Otto Maron, and protests 251254, etc., of G. W. Sheldon & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 20, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 15892.—PROTESTS UNSUPPORTED.—Protest 247856 of Mark Cross, protests 246989, etc., of Calhoun, Robbins & Co. *et al.*, protests 211976, etc., of Jas. G. Johnson & Co. *et al.*, protest 244200 of R. H. Macy & Co., protests 205362, etc., of Mack, Opper & Co., and protest 247537 of P. K. Wilson & Son. Opinions by Howell, G. A.

Same as No. 15891 (*supra*).

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No. 15893.—PROTEST UNSUPPORTED.—Protest 244311 of John Taylor Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Opinion by Howell, G. A.

Same as No. 15891 (*supra*).

No. 15894.—PROTESTS UNSUPPORTED.—Protests 246998, etc., of Fischer & Thompson *et al.* and protest 229804 of Geo. Nash & Co. Opinions by Fischer, G. A.

Same as No. 15891 (*supra*).

No. 15895.—PROTESTS UNSUPPORTED.—Protest 247284 of Apollinaris Agency Company and protest 247391 of S. M. Frank & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 20, 1907. Opinions by Hay, G. A.

Protests overruled for want of merit.

No. 15896.—PROTEST UNSUPPORTED.—Protest 215679 of Komada & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Opinion by Waite, G. A.

Same as No. 15895 (*supra*).

No. 15897.—PROTEST UNSUPPORTED.—Protest 250345 of American Express Company against the assessment of duty by the collector of customs at the port of Boston. Opinion by Somerville, G. A.

Same as No. 15895 (*supra*).

No. 15898.—PROTEST UNSUPPORTED.—Protest 246779 of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News. Opinion by Somerville, G. A.

Same as No. 15895 (*supra*).

No. 15899.—LOGS CUT INTO LENGTHS—ROUND UNMANUFACTURED TIMBER.—Protests 248211, etc., of P. McGettrick against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1, June 21, 1907.

So-called logs, classified under paragraph 198, tariff act of 1897, as wood unmanufactured, were claimed to be free of duty under paragraph 699, relating to "logs and round unmanufactured timber." Protests sustained. Note G. A. 4681 (T. D. 22108).

MCCLELLAND, *General Appraiser:* * * * The collector states that the logs in question consist of ash blocks from 6 to 20 inches in diameter and cut into lengths of from 2 to 2½ feet. The protests have been submitted for decision on samples representing the merchandise, an inspection of which shows that the pieces have been cut from the logs evidently for the purpose of convenience in transportation and of a length suitable for use in the manufacture of hames. It has been repeatedly held by the Board that the mere sawing of round timber into lengths does not constitute a manufacture.

No. 15900.—REVOLVERS—AUTOMATIC PISTOLS.—Protest 243117 of William Read & Sons against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, June 21, 1907.

Automatic pistols, classified as manufactures of metal under paragraph 193, tariff act of 1897, were claimed to be dutiable as revolvers under paragraph 158. Protests overruled.

FISCHER, *General Appraiser:* * * * The question is whether these weapons are revolving pistols within the meaning of the specific tariff provision for such articles. They are invoiced as automatic pistols, and the testimony is to the effect that they are known and dealt in as such. The revolving pistol, for which provision is made in paragraph 158 of the tariff, is a pistol with a revolvable chambered cylinder or revolvable group of barrels. The article before us has no revolving cylinder.

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can not be said to be what is commercially known as a revolver, and from the testimony and the sample offered in evidence we find that it is not classifiable as such.

We are, however, inclined to question the correctness of the collector's decision that automatic pistols are classifiable as manufactures of metal, at 45 per cent ad valorem. This Board has held that horse pistols and pistols of antique style and shape were properly dutiable as side-arms under paragraph 154 of the tariff. Note G. A. 5404 (T. D. 24621), and unpublished decision dated April 1, 1902, in the matter of protest 72014*f*; also "side-arms" as defined in the Standard Dictionary, which includes pistols among swords, bayonets, etc., as being weapons worn at the side. There is no claim in the protest before us that the pistols should have been returned under paragraph 154 as side arms, nor have they offered evidence that these automatic pistols belong to or are in the nature of that class of weapons. This being the case, we are not required to decide such issue.

No. 15901.—ALBUM POST CARDS.—Protests 227640, etc., of R. S. Wheeler against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 2, June 21, 1907.

So-called album post cards, classified under paragraph 404, tariff act of 1897, as albums, were claimed to be dutiable under paragraph 403 as printed matter.

FISCHER, *General Appraiser:* * * * No evidence was offered by the importer, the cases having been submitted for decision on the record and some samples; and an examination of these shows that the so-called album post cards are in the form of envelopes, one side of which has a pictorial scene printed thereon, while the reverse side is reserved for mailing purposes with the usual directions for such purpose printed thereon. They contain a series of printed views, which fold together and are so arranged as to slide within the envelope. They are made of separate printed sheets of paper which have been folded, pasted, and fastened together. Following the recent decision by the circuit court in the matter of lithographic wall pockets in the case of Knauth *v.* United States (T. D. 28184), we hold that these articles are something more than the ordinary printed matter for which provision is made in paragraph 403 of the tariff, and we hold that they are properly classifiable as manufactures of paper at 35 per cent ad valorem under paragraph 407, and overrule the protests. The decision of the collector will stand in each case.

No. 15902.—POST-CARD ALBUMS.—Protests 250707, etc., of Weiller & Sons *et al.* June 21, 1907.

Same as No. 15812 (*supra*).

No. 15903.—METAL-THREAD GOODS.—Protest 248565 of Poncet & Neeser against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinion by Fischer, G. A.

The goods were held to have been properly classified under paragraph 179, tariff act of 1897, relating to articles composed in chief value of metal thread. G. A. 6498 (T. D. 27780) followed.

No. 15904.—COLD-ROLLED STEEL.—Protests 15480*h*, etc., of Joseph Wilckes *et al.* against the assessment of duty by the collector of customs at the port of New York. June 21, 1907.

Same as No. 15868 (*supra*).

No. 15905.—SILK POWDER PUFFS.—Protests 225284, etc., of McKesson & Robbins against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinion by Howell, G. A.

The protests related to powder puffs, which were held to have been properly classified as manufactures in chief value of silk under paragraph 391, tariff act of 1897. United States *v.* Borgfeldt (T. D. 28142) followed.

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No. 15906.—FIGURED COTTON CLOTH.—Protest 256552 of Rosenthal & Grotta against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been propealy classified as figured cotton cloth under paragraph 313, tariff act of 1897.

TREASURY DEPARTMENT, *June 26, 1907.*

The appended court decisions are published for the information of collectors of customs and others concerned.

JAMES B. REYNOLDS, *Acting Secretary.*

(T. D. 28279.)

Jacquard goods.

BASSETT *v.* UNITED STATES.

U. S. Circuit Court, Eastern District of Pennsylvania. June 4, 1907. No. 82 (suit 1739).

JACQUARD FIGURED GOODS.

Silk fabrics made upon a Jacquard loom and containing two or more colors in the filling held to be "Jacquard figured goods in the piece, * * * containing two or more colors in the filling," regardless of the fact that they may not be such fabrics as are usually and customarily made upon Jacquard looms nor its regular and characteristic product.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 7630 (T. D. 26637), affirmed the assessment of duty by the collector of customs at the port of Philadelphia on importations by Bassett, McNab & Co. The Board's opinion so far as applicable reads as follows:

HOWELL, *General Appraiser:* * * * Protests 130739 and 130742 claim that certain woven silk fabrics, assessed with duty under the provisions of paragraph 387 of the act of July 24, 1897, are properly dutiable at the rate of 50 per cent ad valorem under the provision in paragraph 391 of said act for "all Jacquard figured goods in in the piece, made on looms, of which silk is the component material of chief value, dyed in the yarn and containing two or more colors in the filling."

* * * * * * *

With respect to the goods claimed to be dutiable as Jacquard figured goods, we do not think the testimony sustains the contentions of the importers. Viewing the testimony in the most favorable light for the importers, we think it can not be said to establish anything more than the fact that these goods can be, and in this case may have been, woven on looms with the Jacquard attachment. But it also shows that such goods are made on looms with what are known as the "Darby" or "Armure" attachment, and that they are usually made on looms with one of these attachments in preference to the Jacquard attachment, as the cost of producing them is thus materially lessened. Undoubtedly many woven fabrics could be made on looms with the Jacquard attachment, but it probably would not be profitable to make them on such looms regularly; and the fact that they may be so made, in exceptional instances, does not, in our opinion, bring them within the provision of paragraph 391, which, as we understand it, provides for a distinct class of goods well recognized in trade as Jacquard figured goods."

Walter Evans Hampton, for the importers.

Jasper Yeates Brinton, assistant United States attorney (*J. Whitaker Thompson,* United States attorney, with him on the brief), for the United States.

HOLLAND, *District Judge:* The merchandise here was assessed for duty by the collector of customs of the port of Philadelphia at the rates provided for in paragraph 387 of the act of July 24, 1897, against the protest of the importer that 50 per cent

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ad valorem, under paragraph 391 of said act, is the legal rate for "all Jacquard figured goods in the piece, made on looms, of which silk is the component material of chief value, dyed in the yarn, and containing two or more colors in the filling." etc., which this merchandise is claimed to be. Testimony was taken by the Board of General Appraisers, and a decision overruling the contention of the protest was returned by it July 28, 1905.

On an appeal to this court further testimony was taken, and the Government made the following admission:

The Government admits for the purposes of this case that the goods contained in the importation in question were made upon Jacquard looms, but denies that the goods were such as were usually and customarily made upon Jacquard looms, or formed its regular and characteristic product, and denies also that they may be made as cheaply upon Jacquard looms as upon other looms, and denies that they are Jacquard figured goods.

This admission as to the question of the kind of loom upon which the imported goods were made accords with the weight of the evidence that they were made upon the Jacquard machine.

From the reading of paragraph 391 we are of opinion that "Jacquard figured goods" describes a class of goods "made on looms * * * containing two or more colors in the filling." Figured goods containing two or more colors in the filling may or may not be made on Jacquard looms. There may be other looms devised of a different name to make the Jacquard figured goods, and so long as they are "made on looms containing two or more colors in the filling" the product is Jacquard figured goods. The material in question in fact was made upon the Jacquard loom, and they contain two or more colors in the filling. We therefore think they are Jacquard figured goods. United States *v.* Johnson & Faulkner (139 Fed. Rep., 55; T. D. 26078), affirmed by the circuit court of appeals (142 Fed. Rep., 1039; T. D. 27136; suit 3466).

The decision of the Board of General Appraisers should be overruled and the protest of the importer sustained and the goods assessed at 50 per cent ad valorem under paragraph 391 of the tariff act of 1897; and it is so ordered.

NOTE.—The Government in T. D. 28288 acquiesced in the foregoing decision.

(T. D. 28280.)

Persian berry extract.

UNITED STATES *v.* BERLIN ANILINE WORKS. BERLIN ANILINE WORKS *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 24, 1907. Suits 4377 and 4382.

PERSIAN BERRY EXTRACT—UNENUMERATED ARTICLE.

Persian berry extract is dutiable as an unenumerated manufactured article under section 6, tariff act of 1897, rather than as a color under paragraph 58, or by similitude either to berries advanced in value under paragraph 20, or to the "extracts and decoctions of logwood and other dyewoods, and extracts of barks, such as are commonly used for dyeing or tanning," which are enumerated in paragraph 22.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the petitioner in each case.]

These are cross appeals from a decision of the Board, which is reported as Abstract 12160 (T. D. 27493), and sustained one of the importers' contentions against the assessment of duty by the collector of customs at the port of New York. The opinion of the Board reads as follows:

LUNT, *General Appraiser:* We find that the Berlin Aniline Works imported into the port of New York, October 21, 1905, certain merchandise invoiced as "extract of

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Persian berry," upon which duty was assessed at 30 per cent ad valorem under paragraph 58 of the tariff act of 1897 as a color, and which is claimed to be dutiable at seven-eighths of 1 cent per pound under paragraph 22, or at one-half of 1 cent per pound or five-eighths of 1 cent per pound under the same paragraph, or at one-fourth of 1 cent per pound and 10 per cent ad valorem under paragraph 20, or at 10 or 20 per cent ad valorem under section 6.

This merchandise is exactly identical with the Persian berry extract covered by G. A. 6272 (T. D. 27054), decided by this Board January 26, 1906, and we are not inclined to change our conclusion as therein expressed. We therefore find it to be as specified in that decision, a nonenumerated manufactured article dutiable under section 6 at 20 per cent ad valorem, and the protest is sustained on this claim.

In the Government's appeal (T. D. 27522) it is contended that the article was properly classified as a color under said paragraph 58; in the importer's appeal that it should have been classified by similitude either under paragraph 20 as berries advanced in value, or under paragraph 22 as "extracts and decoctions of logwood and other dyewoods, and extracts of barks, such as are commonly used for dyeing or tanning."

J. Osgood Nichols, assistant United States attorney, for the United States.

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

PLATT, *District Judge:* Decision affirmed.

NOTE.—The Government in T. D. 28312 acquiesced in the foregoing decision.

(T. D. 28281.)

Drawnwork.

BEACH *v.* SHARPE.

U. S. Circuit Court, Western District of Texas, El Paso Division. June 19. 1907. No. 454 (suit 1916).

DRAWNWORK—EMBROIDERY—IMITATION LACE.

Woven articles containing ornamental effects produced by drawing out certain warp and filling threads and the interjection of independent threads, giving an openwork effect, *Held* dutiable under paragraph 339, tariff act of 1897, relating to goods "in imitation of lace * * * and other articles or fabrics embroidered." While possibly these articles are not in imitation of lace. the ornamental figures at least constitute embroidery.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

These proceedings are brought by Henry S. Beach against Alfred L. Sharpe, collector of customs at the port of El Paso, and refer to a decision of the Board reported as Abstract 13387 (T. D. 27705), the opinion in which reads as follows:

DE VRIES, *General Appraiser:* This merchandise consists of so-called drawnwork. It was assessed for duty at the rate of 60 per cent ad valorem under the provisions of paragraph 339 of the tariff act of 1897 as articles made in part in imitation of lace, and is claimed to be properly dutiable at the rate of 35 per cent ad valorem under the provisions of paragraph 346 of said act, or at the rate of 55 per cent ad valorem under the provisions of paragraphs 312 and 345 of said act as handkerchiefs having drawn threads.

This subject was fully considered by this Board in G. A. 6452 (T. D. 27644). In that case much testimony was taken. The record in that case was the record in protests 118635, etc., arising at the port of New York. For the purposes of decision in this case the record and testimony in that case are hereby consolidated with the record and testimony in this case, in order that a decision may be had upon a full and complete record.

There are many protests, commencing with the initial number of 160792, that were the subject of testimony at the hearing before the Board. It is impossible, however, to identify these samples with the invoices except in protest 160799; and for that reason and for the further reason that the samples in this case are typical of the samples in the other cases the one protest is hereby decided.

No appeal having as yet been taken from said G. A. 6452, this case is decided.

The samples introduced are marked Exhibits 1, 2, and 3, protest 160799.

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In view of the full consideration of the subject-matter in said G. A. 6452, and of the principles therein laid down, we deem it inadvisable to enter at length upon their consideration here. The consideration given in that case is applicable to the merchandise in this case, and the decision rendered in that case is hereby adopted as the decision in this case, and reference to it in published form in the Treasury Decisions hereby made.

For the reasons therein set forth the Board finds with reference to the merchandise covered by this protest as represented by the samples stated—

1. That the merchandise represented by Exhibits 1 and 2 is in part of imitation of lace, and made in part in imitation of lace.

2. That the said merchandise represented by the aforesaid samples 1 and 2 is in each case in part embroidered.

3. That such merchandise as is represented by Exhibit 3 herein is neither embroidered, lace, imitation lace, nor made in imitation of lace, but consists of a cotton handkerchief having drawn threads.

4. That the merchandise covered by these samples represented by Exhibits 1 and 2 is not homogeneous in construction; that the count of threads varies in different parts thereof beyond statutory particulars; that substantial and the most valuable portions thereof are not susceptible of warp and weft count.

5. That the merchandise covered by these protests and represented by Exhibits 1 and 2 consists of completed articles made up ready for use, weighing less than 4½ ounces per square yard and containing more than 100 threads per square inch, including warp and filling.

Basing our conclusions in the order herein solely upon findings 1 to 3, and not upon findings 4 or 5, by reason of previous decisions by the United States circuit courts, these protests are overruled as to the goods in items designated by the Exhibits 1 and 2. As to the goods represented by Exhibit 3, we hold these to be specifically provided for in paragraph 312 as handkerchiefs of cotton having drawn threads, and, as such, dutiable properly at the rate of 55 per cent ad valorem under paragraph 312 as claimed.

The collector will be governed accordingly.

J. M. Dean, for the importer.

C. A. Boynton, United States attorney, and *S. Engelking*, assistant United States attorney, for the collector.

STATEMENT BY THE COURT.

The questions involved arise upon the application of Henry S. Beach to review the decision of the Board of General Appraisers affirming the action of the collector of customs at El Paso in assessing duty upon certain imported goods usually known to the trade as drawnwork. The importations consisted of certain fabrics of flax, which were in the form of cloth squares of various sizes known as bureau covers, table squares, handkerchiefs, and articles of a similar nature containing certain ornamental effects in various portions of the squares, produced by drawing out certain of the warp or weft threads or both, and by the interjection of different and independent threads, producing openwork effect. The protests of the importer embraced originally a variety of drawnwork articles; but the attention of the court will be confined to Exhibit 1 as other articles have been eliminated from the case by the following stipulation of counsel:

I. In the above numbered and entitled cause it is hereby agreed between counsel for the plaintiff and defendant, respectively, that the handkerchief, Exhibit 3, need not be considered by this court in determining the correctness of the decision rendered by the Board of United States General Appraisers at New York, the classification of said handkerchief by the said Board being correct.

II. That Exhibit 2, being a table cover or centerpiece containing eight (8) thread-wheels, is in part lace, said wheels being inserted in circles cut out of the fabric and said wheels themselves being lace, and that, therefore, the classification of said Exhibit 2 as made by said Board of General Appraisers under paragraph 339 is correct, and duty should be assessed upon the same at 60 per cent.

III. There is no contention between the parties as to count of threads in Exhibit 1, the record itself showing a stipulation between the parties made before General Appraiser Hay at El Paso, and that the said Exhibit 1 in controversy, in so far as the count of threads is concerned, is within the description contemplated by the section of the statute wherein the importer claims the drawnwork to be dutiable at 35 per cent ad valorem, and the same is a woven fabric of flax; the Government contending that the said Exhibit 1 is made in part of lace or in imitation of lace or contains embroidery

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upon it, though the original fabric in such parts may have been of flax, and the defendant, importer, on the other hand contending that Exhibit 1 is a woven fabric of flax and is dutiable under paragraph 346, and the last section thereof, at 35 per cent ad valorem, and that no part of said woven fabric is lace, imitation of lace, or embroidery in any form, but is, and is known to the channels of trade and commerce as drawnwork.

The finding of the Board of General Appraisers was as follows: (1) That the merchandise represented by Exhibit 1 is in part of imitation of lace and that it is made in part in imitation of lace; and (2) that it is in part embroidered. From such finding the importer has prosecuted this application for review.

MAXEY, *District Judge* (after making the foregoing statement): The sample of drawnwork referred to as Exhibit 1 is in form a table cover or table square and contains certain ornamental effects in the corners and other portions of the square. It was classified by the collector of customs under paragraph 339 of the tariff act of 1897 (30 Stat., 181), as "an article made wholly or part of lace, or in imitation of lace," or as "article or fabric embroidered in any manner by hand or machinery, or otherwise." And the duty was accordingly assessed at 60 per cent ad valorem. The importer insists that the article is a woven fabric of flax; that no part of it is lace, imitation of lace, or embroidery in any form, and that it should be assessed for duty under the last clause of paragraph 346 at 35 per cent ad valorem.

To enter upon a discussion of the manner in which lace, embroidery, and drawnwork are made would be altogether profitless. The subject is fully treated in the elaborate and interesting opinion rendered by General Appraiser De Vries, speaking for the Board in the case of J. R. Simon & Co., G. A. 6452 (T. D. 27644); and it is unnecessary to repeat what is there said. The present record has been exhaustively examined, and the case of Simon & Co. *v.* United States (131 Fed. Rep., 649; T. D. 25363), and the same case on appeal to the circuit court of appeals for the second circuit (139 Fed. Rep., 3; T. D. 26271), have been carefully considered. After mature reflection, the court is of the opinion that the finding of the Board of General Appraisers should be affirmed. But in view of the testimony before the court, taken both in New York and at El Paso, there is considerable doubt whether the article of drawnwork in question is made in part in imitation of lace. A distinct ruling, however, upon that feature of the case becomes unimportant, since the court is clearly of the opinion that the ornamental work in the corners of the exhibit and the crosses and other ornamental figures appearing elsewhere in the square are embroidery, as the term is understood by lexicographers and writers on lace and embroidery. See, also, Neuss, Hesslein & Co. *v.* United States (142 Fed. Rep., 281; T. D. 26597); *In re* protests of Homer and Stevens, G. A. 4643 (T. D. 21944). The exhibit, therefore, is in part embroidered, as held by the Board of General Appraisers, and the merchandise is dutiable at 60 per cent ad valorem under paragraph 339 of the tariff act.

The decision of the Board is affirmed.

(T. D. 28282.)

Miniature frames.

UNITED STATES *v.* KNOEDLER.

U. S. Circuit Court, Southern District of New York. May 23, 1907. Suit 4519.

JEWELRY—MINIATURE FRAMES—ARTICLES NOT OF PERSONAL ADORNMENT.

Miniature frames of precious metals set with precious stones, being articles of utility and not for personal adornment, are not included in the provision in paragraph 434, tariff act of 1897, for "articles commonly known as jewelry."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

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For decision below see G. A. 6427 (T. D. 27577), sustaining the protest of M. Knoedler & Co. against the assessment of duty by the collector of customs at the port of New York. Note T. D. 27596, directing the application for review. See Tiffany *v.* United States (131 Fed. Rep., 398; T. D. 25316).

The articles in controversy consisted of miniature frames composed of precious metals set with diamonds and pearls. The importers contended that they had been improperly classified under paragraph 434, tariff act of 1897, relating to "articles commonly known as jewelry," but were dutiable as manufactures in part of metal under paragraph 193, tariff act of 1897. The Board upheld this contention for the following reasons:

SHARRETTS, *General Appraiser:* Had the frames in question been designed or suitable for use as articles to be worn on the person, we would entertain no doubt of the correctness of their classification as jewelry. Articles of utility, however, such as chatelaine bags, jewel cases, and picture frames, not being articles of personal adornment, are not included within the dictionary definition of jewelry, no matter how valuable they may be.

D. Frank Lloyd, assistant United States attorney, for the United States.

Walden & Webster (*Henry J. Webster* of counsel), for the importers.

PLATT, *District Judge:* Decision affirmed.

NOTE.—The Government in T. D. 28244 acquiesced in the foregoing decision.

(T. D. 28283.)

Sufficiency of protest.

MCCOY COMPANY *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 15, 1907. Suit 4169.

PROTEST—SUFFICIENCY.

A protest read, "you have assessed a duty of 1 cent per pound, presumably under paragraph 141, and in addition to other rate or rates on certain iron or steel. Said merchandise is not covered by, nor dutiable under, the said paragraph, nor any portion thereof." *Held* that this was a sufficiently definite statement of objections to the assessment of an additional duty of 1 cent per pound under said paragraph 141.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

The decision below, which is reported as Abstract 9553 (T. D. 26958), affirmed the assessment of duty by the collector of customs at the port of New York on importations by J. F. McCoy Company.

The merchandise consisted of cold-rolled steel strips, which, in addition to other rates, had been subjected to the duty of 1 cent per pound provided in paragraph 141, tariff act of 1897, for such strips brought by various processes "to such perfected surface finish or polish better than the grade of cold-rolled, smoothed only." Subsequently to the decision by the Board it was held by the circuit court of appeals for the second circuit, in United States *v.* Crucible Steel Company (T. D. 28106), that this additional duty was not applicable. For this reason it was agreed at the argument that the merchandise had been improperly classified, and the only question raised by the Government was as to the sufficiency of the protests filed by the importers. The form of these protests is given in the Board's opinion, which reads as follows:

FISCHER, *General Appraiser:* The merchandise consists of sheet steel in strips, upon which duty was assessed at the various rates prescribed in the tariff act of 1897, and in addition thereto 1 cent per pound under the provisions of paragraph 141 of said act. The protests read as follows:

"You have assessed a duty of 1 per cent per pound, presumably under paragraph 141, and in addition to other rate or rates on certain iron or steel. Said merchandise

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is not covered by, nor dutiable under, the said paragraph nor any portion thereof. It is alternatively claimed that if it be dutiable thereunder it should pay only 1 cent per pound, in addition to the rates provided in the act (of July 24, 1897) on common or black finish plates, strips, or sheets."

If the concluding sentence just quoted is to be interpreted as a claim that the strips are dutiable primarily at other rates than those assessed, such claim must be overruled for vagueness. It fails to point out any provision in the tariff for common or black finish strips, nor is any rate of duty suggested at which they might be dutiable. Both parties agree that the articles are steel strips, cold rolled.

We are of opinion, in respect to the claim that the goods are not liable to additional duty under paragraph 141, that the evidence offered on the part of the importers in support of such claim is wholly insufficient. In the returns of the appraising officer on the various invoices made at the time of the examination of the goods and with the goods before him, he describes the strips as "tempered and blued," "cold rolled and polished," "cold rolled and brightened," "blued and brightened," "tempered and polished," and "tempered, blued, and brightened," respectively. Against this full and detailed official description of the articles as actually imported, we have nothing but the statement of the importer, relying on his memory, unsupported by any other evidence and unaccompanied by any samples of the strips, that they were not tempered, blued, brightened, polished, etc.

On this record we can not find that there was any error in the classification of the goods; and the decisions of the collector thereon are hereby affirmed, the protests being overruled.

Comstock & Washburn (*Albert H. Washburn* of counsel), for the importers.

J. Osgood Nichols, assistant United States attorney, for the United States.

PLATT, *District Judge:* Decision reversed.

(T. D. 28284.)

Hauteville stone.

BOCKMANN *v.* UNITED STATES.

U. S. Circuit Court, Southern District of New York. May 28, 1907. Suit 4215.

HAUTEVILLE STONE—MARBLE—LIMESTONE.

So-called Hauteville stone is dutiable as marble under paragraph 114, tariff act of 1897, rather than as "limestone * * * not specially provided for," under paragraph 117.

ON application for review of a decision of the Board of United States General Appraisers.

[Decision in favor of the Government.]

For decision below see G. A. 6298 (T. D. 27157), affirming the assessment of duty by the collector of customs at the port of New York on merchandise imported by A. E. Bockmann.

The material in controversy consists of so-called Hauteville stone, classified as marble under paragraph 114, tariff act of 1897, and claimed to be dutiable as "limestone * * * not specially provided for," under paragraph 117. The Board held it to have been properly classified. Considerable additional evidence was taken in the circuit court.

Comstock & Washburn (*J. Stuart Tompkins* of counsel), for the importer.

D. Frank Lloyd, assistant United States attorney, for the United States.

PLATT, *District Judge:* Decision affirmed.

NOTE.—An appeal herein has been taken to the circuit court of appeals, second circuit.

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(T. D. 28285.)

Packed-package fees.

UNITED STATES *v.* AMERICAN EXPRESS COMPANY.

U. S. Circuit Court, Southern District of New York. May 24, 1907. Suit 4888.

1. PACKED PACKAGES—INCOMPLETE ENTRY—STORAGE CHARGES.

Section 2926, Revised Statutes, authorizing the storage, at the expense of the owner, of merchandise "of which incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice or for any other cause," was as to packed packages modified by the act of May 1, 1876 (19 Stat., 49), which legalizes the entry of such packages without any invoice.

2. SAME—FEE FOR CLEARANCE.

A fee charged by a collector of customs upon the clearance of a packed package is not a charge for the removal or storage of merchandise as provided in section 2926, Revised Statutes; and such charge is illegal under section 22, customs administrative act of 1890, abolishing "all fees exacted * * * upon the entry of imported goods and the passing thereof through the customs."

ON application for review of a decision of the Board of United States General Appraisers.

[Decision adverse to the Government.]

For decision below see G. A. 6552 (T. D. 27962), sustaining the importers' protests against the imposition of a fee or charge by the collector of customs at the port of New York upon the clearance of packed packages. The nature of the questions involved will appear from the following quotation of the assignment of errors as made in the petition filed in behalf of the United States:

And for the errors of law and fact in the decision of said Board herein complained of, your petitioner states—

1. The said Board was in error in holding that the sum charged by the collector upon the packed packages in question is not a charge for the removal or storage of merchandise, as provided for in section 2926, Revised Statutes.

2. In not holding the same to be a charge or expense incident to the removal or storage of the merchandise contained in said packages, as provided for in said section 2926, Revised Statutes.

3. In holding the same to be a fee charged for rendering special services incident to the administration of the act of May 1, 1876.

4. In not holding the same not to be a fee within the provisions of section 22 of the act of June 10, 1890.

5. In holding the same to be a fee exacted without authority of law.

6. In holding that the act of May 1, 1876, modifies all other acts with reference to the entry of packed packages, and only legalizes an otherwise incomplete entry.

7. In not holding such entries to be incomplete entries or entries without the specification of particulars within the provisions of said section 2926, Revised Statutes, and required by section 4 of the act of June 10, 1890.

8. In not holding an entry of one or more packages contained in an importation of packed packages, authorized by the said act of May 1, 1876, to be subject to the charges and expenses prescribed by section 2926, Revised Statutes.

9. In not holding that, as the charge for storage provided for in section 2926, Revised Statutes, was not abolished by section 22 of the act of June 10, 1890, such charge was properly exacted in the case at bar.

The pertinent portions of the statutes cited above are as follows:

That a separate entry may be made of one or more packages contained in an importation of packed packages consigned to one importer or consignee, and concerning which packed packages no invoice or statement of contents or values has been received. Extract from act of May 1, 1876 (19 Stat., 49).

SEC. 22. That all fees exacted and oaths administered by officers of the customs, except as provided in this Act, under or by virtue of existing laws of the United States, upon the entry of imported goods and the passing thereof through the customs, and also upon all entries of domestic goods, wares and merchandise for exportation, be, and the same are hereby abolished.

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SEC. 2926. All merchandise, of which incomplete entry has been made, or an entry without the specification of particulars, either for want of the original invoice, or for any other cause, or which has received damage during the voyage, shall be conveyed to some warehouse or storehouse, to be designated by the collector, in the parcels or packages containing the same, there to remain with due and reasonable care, at the expense and risk of the owner or consignee, under the care of some proper officer, until the particulars, cost, or value, as the case may require, shall have been ascertained either by the exhibition of the original invoice thereof, or by appraisement, at the option of the owner, importer, or consignee.

D. Frank Lloyd, assistant United States attorney, for the United States

Richard V. Evans, for the importers.

PLATT, *District Judge:* Decision affirmed.

(T. D. 28286.)

Common carrier.

Discontinuing shipments under bond of Northern Commercial Company for transportation of appraised merchandise and merchandise to, from, and through the Dominion of Canada.

TREASURY DEPARTMENT, *June 20, 1907.*

SIR: Referring to your letter of the 8th instant, relative to the bond of the Northern Commercial Company, for the transportation of appraised merchandise and merchandise to, from, and through the Dominion of Canada, I have to request that you discontinue the shipment of merchandise under the bond in question, and indorse the discontinuance of the privilege authorized thereunder on said bond, and hold the same without cancellation to meet any liability which may have accrued according to its terms.

Respectfully, JAMES B. REYNOLDS,

(47020.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *San Francisco, Cal.*

(T. D. 28287.)

Drilled pearls.

Directing an appeal from G. A. 6617 (T. D. 28246), wherein it is held that drilled pearls imported loose were properly dutiable at the rate of 10 per cent ad varlorem by similitude under paragraph 436, tariff act of 1897.

TREASURY DEPARTMENT, *June 27, 1907.*

SIR: The Department is in receipt of a decision of the Board of United States General Appraisers of the 14th instant, G. A. 6617 (T. D. 28246), wherein it is held that certain drilled pearls imported loose were properly dutiable at the rate of 10 per cent ad valorem by similitude, under paragraph 436 of the present tariff act.

As the issue is an important one, you are hereby directed to file an application for a review of the said decision, in accordance with the provisions of section 15 of the act of June 10, 1890.

Respectfully, JAMES B. REYNOLDS,

(38319.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *New York.*

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(T. D. 28288.)

Jacquard figured goods.

Decision of United States circuit court for eastern district of Pennsylvania, in Bassett, McNab & Co. *v.* United States (T. D. 28279), acquiesced in.

TREASURY DEPARTMENT, *June 28, 1907.*

SIR: The Department is in receipt of a report of the United States attorney for the eastern district of Pennsylvania, in which he states that the case of Bassett, McNab & Co. *v.* United States (T. D. 28279), No. 82, April sessions, 1905, was recently decided in the United States circuit court for that district adversely to the Government.

The merchandise in suit consisted of woven silk fabrics, on which duties were assessed under paragraph 387 of the act of July 24, 1897. The importers protested, claiming the goods to be Jacquard figured goods in the piece, and as such dutiable under paragraph 391 of the same act, which claim was sustained by the United States circuit court in this case, following United States *v.* Johnson & Faulkner (142 Fed. Rep., 1039).

The Attorney-General advises the Department that no further proceedings will be directed in the case. You are therefore hereby authorized to forward the usual certified statement for refund of the duties exacted in excess in settlement thereof.

Respectfully, JAMES B. REYNOLDS,
(11580.) *Acting Secretary.*

COLLECTOR OF CUSTOMS, *Philadelphia, Pa.*

(T. D. 28289—G. A. 6631.)

Crushed marble.

"Terrazo" or "granito," the waste from marble quarries, crushed in a machine and sifted or sorted into various sizes, *Held* to be free of duty as "minerals, crude, or not advanced in value or condition by refining or grinding, or other process of manufacture," under paragraph 614, tariff act of 1897.—G. A. 5573 (T. D. 24988) Abstract 4091 (T. D. 25867), and others followed.

United States General Appraisers, New York, June 26, 1907.

In the matter of protests 194133, etc., of M. A. Graser Rothe against the assessment of duty by the surveyor of customs at the port of Cincinnati.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* The merchandise consists of crushed marble, upon which duty was assessed at the rate of 10 per cent ad valorem under the provisions of paragraph 463 of the tariff act of 1897 as waste not specially provided for. The importer, in his protests, contends that the merchandise should be admitted free of duty under paragraph 614 as "minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for." The invoices describe it as

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"terrazzosteine," and we find that it is also called "terrazzo," and "granito." It is the waste from marble quarries, crushed in a machine and sifted or sorted into various sizes.

This merchandise has merely been crushed and not ground. Crushing as defined by the Standard Dictionary consists of breaking into bits by pressure, whereas the same authority defines grinding as a reduction to fine particles or powder by crushing or friction, the first being simply a reduction in size, while the other is reducing to a powder or pulverizing. Stone which had simply been crushed by machinery or otherwise has been repeatedly held not to be manufactured; and the Board has held in numerous decisions that this article is entitled to free entry under paragraph 614 of the present act and similar provisions under previous acts. Note G. A. 5573 (T. D. 24988); G. A. 2785 (T. D. 15391); G. A. 2343 (T. D. 14551); Abstract 4091 (T. D. 25867); Abstract 7773 (T. D. 26655); Abstract 10547 (T. D. 27223); Abstract 12634 (T. D. 27572).

The classification of this merchandise as waste is a stultification of the Government's contention, for if the article be waste it is clearly not a manufactured article and clearly can not be an article advanced in value or condition by a process of manufacture. The sifting or sorting is merely an operation similar to that of jigging in the case of ores, and it does not change the crushed stone from its unmanufactured state. This crushed stone is therefore not a manufactured article, and has not been advanced in value or condition by refining, by grinding, or by other process of manufacture. Following the rulings above cited, we sustain the protests and reverse the decision of the collector in each case.

CONCURRING OPINION.

HOWELL, *General Appraiser:* Inasmuch as the commodity here in question has been the subject of decisions by this Board on several occasions during the past three years, and has, in every instance, been held to be entitled to free entry under the provisions of paraprapph 614, I am constrained to concur in the conclusion of my colleagues that these protests should be sustained. Unembarrassed by the previous rulings, I should reach a different conclusion.

In my judgment, it is unnecessary to discuss the question as to whether or not there be any such distinction as that which my colleagues attempt to make between grinding and crushing, though I think there is very little difference between them, for one of the definitions of grinding is to *crush* into small fragments.

If it be admitted, however, that the article has not been advanced in value and condition by grinding, it certainly has been so advanced by "a process of manufacture," which is sufficient to take it out of paragraph 614.

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The article is produced from the waste of marble quarries. The testimony shows that this waste, which is practically valueless commercially, is ground or crushed in a machine specially made for the purpose, and that it is assorted or separated into sizes by passing the crushed marble through sieves or screens of various sized mesh. In this condition, which is the condition in which it is imported, it is known as "granito" or "terrazzo," and is worth from $10 to $11 per ton. It is used with cement in making mosaic floors. The merchandise as imported has therefore been converted from a comparatively valueless article into a commodity of use and value by a process of manufacture specially designed for the purpose. Labor and machinery have been used in producing it, and because of the manufacturing process it has acquired a new name and new use. It is therefore no longer a crude mineral but is a manufactured article. Hartranft *v.* Wiegmann (121 U. S., 609); Schrieffer *v.* Wood (5 Blach., 215); Stockwell *v.* United States (3 Cliff., 284); Erhardt *v.* Hahn (55 Fed. Rep., 273); *In re* Gardner (72 Fed. Rep., 494).

In the Erhardt case (*supra*) the circuit court of appeals for the second circuit said:

> It has been repeatedly decided, under the tariff acts, that where an article has been advanced through one or more processes into a complete commercial article, known and recognized in trade by a specific and distinctive name other than the name of the material, and is put into a completed shape designed and adapted for a particular use, it is deemed to be a manufacture

The Gardner case (*supra*) also seems to me to be directly in point. In that case the court held that bones which had been crushed and screened were no longer crude bones, which were specially provided for in paragraph 511 of the act of 1890, but were to be regarded as a manufactured article. The pertinent portion of the paragraph under consideration in that case reads as follows:

> Bones, crude, or not burned, calcined, ground, steamed, or otherwise manufactured.

The court (McKenna, circuit judge), in referring to this paragraph, said:

> It appears to regard bones which are burned, calcined, or ground as manufactured. If so, the words "otherwise manufactured" would include those crushed and screened, and it is conceded that the bones in controversy are crushed and screened.

In the case at bar the marble has been ground or crushed in a machine specially made for the purpose, and then screened, and by these processes a comparatively valueless article has been converted into an article of considerable value with a distinct name and use in the trade and commerce of the country. This, I think, clearly takes the merchandise out of the purview of paragraph 614, which, under the decision in the Erhardt case, is to be limited "to minerals in a state of preparation for manufacturing uses before they have reached the condition of a manufactured article."

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The commodity in question is certainly advanced beyond the stage of a crude mineral. It is marble advanced from a crude state through the application thereto of skilled labor. It is, however, still "marble" and not an article "made up" of marble (United States *v.* Dudley, 174 U. S., 670), and is therefore not dutiable as a manufacture of marble under paragraph 115. Tide Water Oil Company *v.* United States (171 U. S., 210).

In my opinion, the article is properly dutiable at 20 per cent ad valorem under the provision in section 6 for "all articles manufactured, in whole or in part, not provided for in this Act." Worthington *v.* Robbins (139 U. S., 337) and G. A. 4921 (T. D. 23028).

(T. D. 28290—G. A. 6632.)

Protest covering returned merchandise—Jurisdiction of the Board.

The Board of General Appraisers has no jurisdiction to pass upon a protest demanding relief from the payment of duty, owing to the fact that the merchandise is alleged to be unfit and spoiled and has been returned to the place whence exported.

United States General Appraisers, New York, June 26, 1907.

In the matter of protest 250719 of Alfred Jones' Sons against the assessment of duty by the collector of customs at the port of Bangor.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

LUNT, *General Appraiser:* The importation in this case consists of 2,000 pounds of smoked bloaters, upon which the collector assessed a duty of three-fourths of 1 cent per pound under the provisions of paragraph 261 of the tariff act of 1897. The importers' protest reads as follows:

I respectfully appeal from the decision of the collector of customs at the port of Vanceboro, Me., assessing duty at the rate of three-fourths cent per pound on 2,000 pounds smoked bloaters imported by A. Jones Brothers, * * * from St. John. New Brunswick, * * * and duty amounting to $15. * * * When the fish arrived in Bangor they were at once opened and found to be spoiled and unfit for use. The matter was taken up with the shipper who ordered the fish to be returned to St. John, New Brunswick, which was done. Under these conditions I respectfully ask for the return of $15 duty paid on the fish.

This protest is not filed for the purpose of obtaining money unlawfully exacted under a paragraph of the present tariff act, but because the merchandise was returned to the place whence exported, owing to the alleged unfitness and uselessness of the goods, and consequently that the importers paid duty upon merchandise which they claim they were unable to and did not use.

The customs administrative act of June 10, 1890, confers certain powers upon the Board of United States General Appraisers, but we fail to find therein any power or right conferred upon it enabling us to afford the importers relief in a case such as is now before us.

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Their remedy does not lie by protest to the Board. The protest is therefore without force and is hereby dismissed for want of jurisdiction.

(T. D. 28291—G. A. 6633.)

Oak plank linoleum.

"Plank" or "oak plank" linoleum is properly dutiable at the rate of 8 cents per square yard and 15 per cent ad valorem as plain linoleum under the provisions of paragraph 337, tariff act of 1897.

United States General Appraisers, New York, June 26, 1907.

In the matter of protests 229748, etc., of Scott & West *et al.* against the assessment of duty by the collector of customs at the port of Boston.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise consists of so-called "plank linoleum" or "oak plank linoleum." It was assessed for duty as inlaid linoleum at the rate of 20 cents per square yard and 20 per cent ad valorem under the provisions of paragraph 337, tariff act of 1897, which, in so far as applicable, reads:

337. Oilcloth for floors, stamped, painted, or printed, including linoleum or corticene, figured or plain, * * * not specially provided for herein, eight cents per square yard and fifteen per centum ad valorem; * * * inlaid linoleum. * * * twenty cents per square yard and twenty per centum ad valorem. * * *

It is claimed to be properly dutiable at 8 cents per square yard and 15 per cent ad valorem under the same paragraph as plain linoleum.

The determination of what constitutes a plain as distinguished from an inlaid linoleum was the subject of decision by the United States circuit court of appeals in the case of United States *v.* Hunter (127 Fed. Rep., 1022; T. D. 25075), which affirmed the decision of the circuit court for the southern district of New York in Hunter *v.* United States (121 Fed. Rep., 207). The court above adopted the opinion of the court below, in which it was stated that "inlaid" as applied to linoleums applied to that class of goods wherein the substance was "laid in a definite space as a separate part of the material of the structure." From the record in that case, which is before us, and the testimony in this case, it appears that inlaid linoleums are made by laying in blocks which are fitted into definite spaces upon the basis or foundation, the whole then being rolled and pressed down, the finished article maintaining the appearance made by this spacing of the materials. Plain linoleums are made by feeding the soft substance upon the basis or foundation without regard to any definite or particular spaces and then rolling the same down.

It appears further from the testimony in this case that the process of making this linoleum is similar to that in the making of plain or granite linoleums and differs materially from the process employed in making inlaids.

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We are of the opinion that this article is not an inlaid but a plain linoleum.

The protests are sustained and reliquidation accordingly will follow.

(T. D. 28292—G. A. 6634.)

Lithographs, mounted—Manufactures of paper.

Lithographs mounted on cardboard and set into a cardboard mount after the lithographic print, as such, is complete, held to be dutiable, in accordance with the doctrine enunciated in Knauth *v.* United States (T. D. 28184), as manufactures of paper at 35 per cent ad valorem under the provisions of paragraph 407, tariff act of 1897.

United States General Appraisers, New York, June 26, 1907.

In the matter of protest 211254 of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* This importation consists of three pictures invoiced as "Whistler lithos," each mounted on cardboard in a cardboard mat, ready for framing. The articles were returned by the appraising officer as pencil drawings, and duty was assessed thereon at the rate of 20 per cent under the provisions of paragraph 454, tariff act of 1897. They are claimed to be lithographic prints, dutiable at 5, 6, 8, or 20 cents per pound under paragraph 400.

In our opinion, the testimony satisfactorily establishes that these works are productions of the artist Whistler, that they were printed from stone—from drawings on stone made by him—and that they are lithographic prints; and we should be inclined to sustain the protest but for the recent ruling of the circuit court, southern district of New York, in the case of Knauth *v.* United States, reported by the Treasury Department in T. D. 28184. In that case it was held that lithographic prints, which, after they left the lithographer's hands, were pasted on cardboard, embossed, and cut out, to be used as wall pockets, were no longer lithographic prints for duty purposes, but were to be classified as manufactures of paper. In the opinion, which was by Platt, *J.*, it was also held that the term lithographic prints is not a commercial term, thus negativing the ruling of this Board in G. A. 4959 (T. D. 23169), based on the testimony of 16 witnesses representing both domestic and importing lithographic interests.

This ruling has direct application to the goods before us, because after the lithographic print was complete as such it was mounted on a piece of cardboard and inserted in a cardboard mat. The articles would seem therefore, under the court decision cited, to be dutiable properly as manufactures of paper under the provisions of paragraph 407 of the tariff act.

The protest is overruled without an affirmance of the collector's decision.

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(T. D. 28293—G. A. 6635.)

Furniture, embroidered.

Furniture, embroidered, is properly dutiable at the rate of 60 per cent ad valorem, by virtue of the proviso to paragraph 339, tariff act of 1897.

United States General Appraisers, New York June 27, 1907.

In the matter of protest 243237 of W. & J. Sloane against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, AND DE VRIES, General Appraisers).

DE VRIES, *General Appraiser:* The merchandise is admittedly furniture covered with embroidered silk. It was returned for duty as embroidered articles, silk chief value, at the rate of 60 per cent ad valorem under the provisions of paragraph 390, tariff act of 1897, which, in so far as applicable, reads:

390. * * * Embroideries and articles embroidered by hand or machinery, * * * all of the above named articles made of silk, or of which silk is the component material of chief value, not specially provided for in this Act, * * * sixty per centum ad valorem.

It is claimed to be properly dutiable as household furniture at the rate of 35 per cent ad valorem under the provisions of paragraph 208 of said act, which reads:

208. House or cabinet furniture, of wood, wholly or partly finished, and manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this Act, thirty-five per centum ad valorem.

The sole question in this case is one of law. A brief filed on behalf of the importers makes the contention that the provisions of paragraph 208 are more specific when applied to articles such as this importation than the provisions of paragraph 390, upon which was rested the decision of the collector.

Regardless of the merits of this contention, we are of the opinion that, perforce the proviso to paragraph 339 of said act, the goods are nevertheless dutiable at the rate of 60 per cent ad valorem. That proviso reads:

Provided, That no wearing apparel or other article or textile fabric, when embroidered by hand or machinery, shall pay duty at a less rate than that imposed in any schedule of this Act upon any embroideries of the materials of which such embroidery is composed.

By numerous decisions of this Board, which it is unnecessary we should here discuss or review, it has been held that the proviso to paragraph 339 extends to all the other provisions of the tariff law and covers every class of merchandise imported, save and except possibly fans as provided for in paragraph 427, by reason of the comprehensive character of the language of that paragraph. This question was fully discussed by the Board in G. A. 6605 (T. D. 28204), and, as therein pointed out, the question is one which has been reviewed not alone by the Board but by different United States circuit courts and circuit courts of appeals, and has had the affirmative approval of the Supreme Court. We think the matter has become *stare decisis.*

The protest is overruled.

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(T. D. 28294—G. A. 6636.)

Gray blue.

Gray blue, a pigment containing ultramarine blue, but of pale blue tint and not possessing the coloring strength of ultramarine blue, is not the ultramarine blue of commerce and is not dutiable as such under paragraph 52, tariff act of 1897, but as a pigment under paragraph 58.

United States General Appraisers, New York, June 28, 1907.

In the matter of protest 251814 of F. A. Reichard against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest is invoiced as "gray blue," and was returned by the appraiser as "color" with advisory classification under paragraph 58 of the tariff act of 1897, at the rate of 30 per cent ad valorem. The collector, exercising his prerogative, disregarded the appraiser's return, and assessed duty thereon at the rate of 3¾ cents per pound under the provisions of paragraph 52 of said act.

It is claimed that the merchandise is not dutiable as assessed, but that it is properly subject to duty at either 10 per cent ad valorem as waste under the provisions of paragraph 463, or 30 per cent ad valorem as a pigment under the provisions of paragraph 58. The paragraphs thus involved are as follows:

52. Ultramarine blue, whether dry, in pulp, or mixed with water, and wash blue containing ultramarine, three and three-fourths cents per pound.

58. All paints, colors, pigments, lakes, crayons, smalts and frostings, whether crude or dry or mixed, or ground with water or oil or with solutions other than oil, not otherwise specially provided for in this Act, thirty per centum ad valorem; all paints, colors and pigments, commonly known as artists' paints or colors, whether in tubes, pans, cakes or other forms, thirty per centum ad valorem.

463. Waste, not specially provided for in this Act, ten per centum ad valorem.

Attached to each of the invoices involved is a memorandum of the collector as follows:

The merchandise specified on the foregoing invoices as gray blue is returned by the appraiser in his advisory classification as a color under paragraph 58 dutiable at 30 per cent ad valorem.

It is strenuously insisted by domestic interests that the article is ultramarine blue covered by paragraph 52 and dutiable at 3¾ cents per pound.

That the article contains ultramarine blue is not disputed. A considerable number of witnesses have been produced before the collector who have testified that the article is the ultramarine blue of trade and commerce, and their testimony has been controverted by experts and tradesmen familiar with the subject. The question is left in doubt upon the testimony. I am free to say that I would not classify the article as ultramarine blue if such action were necessarily final, but if my classification as ultramarine blue is erroneous it can be corrected upon review and the interests of the Government and the importer alike protected. If classified as a color under paragraph 58, such review could not be had and the Government might suffer a loss in duties.

These considerations constrain me to classify the same as ultramarine blue under paragraph 52 dutiable at 3¾ cents per pound.

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The situation as presented by the record and indicated by the collector's decision is somewhat unusual. The contention for the assessment of 3¾ cents per pound on the merchandise and for the affirmance by this Board of such assessment is made by private interests in no way connected with the Government. On the hearing the testimony in support of this contention was presented by the private counsel of these private interests, instead of by the Government's legal representative, as is usual in such cases.

The question involved is to be determined very largely on the evidence of so-called expert witnesses, and as in most cases where such is the fact, there is much of conflict and decidedly diverse views.

On the one hand, we have a number of witnesses of extended experience in the buying and selling of ultramarine blue and other pigments—men who may be said to be possessed of practical rather than scientific knowledge as to the character and uses of the commodities in which they have dealt during their long business experiences. On the other hand, we have a number of chemical experts whose opinions as to the character and uses of commodities similar to that before us are based wholly upon the chemical properties which analyses show them to contain. And again, other witnesses have testified in support of the assessment of duty made by the collector who have both scientific and practical knowledge as to the composition and uses of such commodities.

It ought not to be overlooked, however, in determining this issue that the witnesses last referred to, because of their business relationship to each other and to the business combination or syndicate which assumed the conduct of the Government's case, and because of their practical control of the manufacture and sale of domestic ultramarine, are interested witnesses. In weighing the testimony given by them this fact must be considered.

There is no doubt that this gray blue contains ultramarine; but this fact does not of itself make the article the ultramarine blue contemplated by the language of paragraph 52. It is equally certain that the acid tests so frequently referred to by the witnesses will determine the presence or absence of ultramarine in a pigment, and there is undoubtedly sufficient ultramarine present in this pigment to produce on the application of the acid test the offensive odor described as sulphureted hydrogen, which unerringly denotes its presence.

The real question to be determined, however, in our opinion, is whether this so-called gray blue is such a substance or combination of substances as is ultramarine blue according to the trade understanding, and such fact is not to be determined merely upon the scientific fact that it contains ultramarine and is of a bluish tint.

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A number of trade witnesses who have had long experience in buying and selling ultramarine blue, and who must be presumed to have sufficient practical knowledge to determine what is and is not ultramarine blue as that term is used commercially, have united in saying that this gray blue is not the ultramarine blue of commerce. This fact is best demonstrated by the testimony of the witnesses, from which we quote as follows:

Emanuel H. Kohnstamm, who has bought and sold gray blue here and abroad and has been familiar with it for thirty-six years in his dealings with the paint trade, testified:

Q. Now, with your knowledge of the trade would you buy or sell that gray blue as ultramarine blue?—A. I would not.

Q. Did you ever know of its having been bought or sold as an ultramarine blue?—A. I do not know of any such case.

Q. If you gave an order for ultramarine blue and were furnished this gray blue would you think the order had been fully filled?—A. I would not accept it as such. (P. 8.)

* * * * * * *

Q. *Has ultramarine blue a well-understood meaning in the paint trade?*—A. *It has; everyone who buys ultramarine blue knows what ultramarine blue is.*

Q. And did I understand you to say that you would not consider this a delivery for ultramarine blue?—A. *I would not accept it as such.*

* * * * * * *

John R. Johnston, who has had experience in buying and selling ultramarine blue for thirty years:

Q. Has the term ultramarine blue a well-understood meaning in the paint trade?—A. Very well; every decorator and painter who uses ultramarine knows the different characteristics obtained from ultramarine.

Q. Having that trade understanding in your mind would you say that this gray blue that was submitted to you was ultramarine blue or not?—A. I can not say it was, commercially. (P 20.)

* * * * * * *

Q. Tell me just how you determine that a sample of the gray blue involved in this importation submitted to you is not an ultramarine blue?—A. I simply rubbed it up with water and oil on the slab, and the cast showed was a bluish lead color which looked to me like an article we know as sublimed lead.

Q. Well, now, that process was sufficient to enable you to determine that the gray blue submitted was not an ultramarine blue?—A. Not an ultramarine blue that I can use in my business and for my trade. I did not go into it any further.

Q. According to your understanding of the trade meaning of ultramarine blue, was it not ultramarine blue?—A. It was not. (P. 23.)

Howard Waldo, twenty-three years experience in the buying and selling ultramarine blue:

Q. Would you consider from your experience and knowledge in the trade that an order for ultramarine blue was filled by furnishing this blue gray?—A. No, sir; no, sir.

Q. Or that if ultramarine blue were ordered of you if you were filling an order if you furnished blue gray?—A. No, sir; emphatically no.

Q. From your knowledge of the ultramarine blue, from your experience in trade, from your knowledge derived from buying and selling ultramarine blues, would you consider this gray blue as an ultramarine blue in any sense?—A. No, sir. (Pp. 29–30.)

* * * * * * *

Q. Now, when this sample was shown you, you say you pronounced at once that it was not ultramarine blue?—A. Of the commercially accepted ultramarine blues, yes, sir.

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Q. What led you to that conclusion?—A. Any man who has been in a thing—there are certain things that appeal to him right away as being one thing or the other. It is a blue of that nature. I simply took this blue and rubbed it in my hand, and it had no staining power. An ultramarine blue has an essential staining power. (Pp. 31-32.)

* * * * * * *

Q. Based upon your experience in your trade experience, would you say that the term ultramarine blue had a well-defined meaning in the paint trade?—A. Just as well defined as Prussian blue. They are two distinct blues.

Q. And would you say, then, in view of your experience, that this gray blue here involved was or was not an ultramarine blue?—A. Commercially?

Q. Commercially I am talking about?—A. No; it is not in any application of the term. (P. 39.)

Joseph M. Hober, manufacturer and importer of colors, who has bought and sold ultramarine blue since 1887:

Q. Would you from your experience in the trade and your examination consider this gray blue commercially an ultramarine blue?—A. No.

Q. Well, if you gave an order for a quantity of ultramarine blue and were furnished with that gray blue, would you consider that your order had been properly filled?—A. No. (P. 51.)

Charles Poppe, who has been familiar with ultramarine blue for nineteen years:

Q. If you gave an order for ultramarine blue and this gray blue was sent to you, would you consider that order filled?—A. Not for ultramarine blue. (P. 59.)

* * * * * * *

Q. Having decided that it was ultramarine blue, you decided that it was not blue?—A. Yes, sir.

Q. What kind of ultramarine blue did you decide it to be?—A. A sort of gray.

Q. An ultramarine gray?—A. An ultramarine gray.

Q. Is that a well-known commercial article?—A. No. (P. 61.)

Herman A. Fischer, who has bought and sold ultramarine blue for nineteen years:

Q. Have you seen this substance that is called blue gray or gray blue?—A. I have.

Q. Would you, from your knowledge of ultramarine blue and your experience in the trade, call that substance an ultramarine blue?—A. No.

Q. Would you consider that if you had ordered ultramarine blue and been furnished with that your order had been filled?—A. No, sir. (P. 64.)

Q. (By General Appraiser McClelland.) How does it differ?—A. The first test is *with the eye.* It strikes the eye immediately. *The eye can see a thing often that is difficult to explain.* The tone is not clear, and unsatisfactory, and it looks weak. It seems to have no tinting strength at all, and on comparing it with standards of ultramarine colors, which we carry in the office, we decided that we could have no use for it as a commercial ultramarine. (P. 64.)

Maximilian Toch, chemist and manufacturer of paints of twenty-one years experience:

Q. Now, have you examined this blue gray which is the subject of controversy here, or blue gray?—A. Yes.

* * * * * * *

Q. Now, from your knowledge of ultramarine blue by observation in the trade, would you consider this gray blue, commercially speaking, an ultramarine blue?—A. No. (P. 86.)

* * * * * * *

Q. Will you describe the examination which you made?—A. Yes, sir. I rubbed it out in oil and rubbed it out in oil alongside a standard ultramarine blue. I then took

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the blue in dispute and reduced it with 10 per cent of white. I did the same with the blue which I knew to be ultramarine blue, and I have the comparative tests here. and I am firm in my opinion that the blue in dispute is not ultramarine blue from its appearance. (Pp. 89-90.)

* * * * * * *

Q. (By General Appraiser McClelland.) Is there not a way of determining from a commercial point of view without going into it so scientifically?—A. Yes, sir.

Q. Tell us if you can, for my benefit, how you can determine that an article is ultramarine blue from a commercial point of view?—A. * * * Now, if you are associated with colors for a number of years and you see ultramarine blue every day in your life, there are certain earmarks, certain points of indication which demonstrate to you beyond question that a color of given effect is ultramarine blue; we all know that. * * * Now, I have here ultramarine rubbed out in oil and the blue gray which is disputed. Any man, unless he be color blind, could see that these are two different things, and anyone will at once see that which is ultramarine blue from that which is gray blue. (Pp. 93-94.)

As against the opinions of these experienced men, we have, as already indicated, the opinions of men of acknowledged standing as chemical experts to the effect that the question of whether a substance similar to that before us is or is not ultramarine blue can not be determined by mere visual examination or by the rubbing-out process adopted by some of the witnesses, but only upon actual test; and the net result of their opinions after testing this so-called gray blue is that it is ultramarine blue. There is no escape from the conclusion that their scientific view is that, so long as under the test applied a pigment of bluish tint throws off the odor of sulphureted hydrogen, thereby denoting the presence therein of ultramarine, it is ultramarine blue. The most that may be said of such a view is that it may be technically or scientifically correct, but it is not upon such theory that the classification of merchandise is to be determined. In Goat and Sheepskin Import Company *v.* United States, recently decided (T. D. 28190), Mr. Justice Peckham, writing for the United States Supreme Court, said:

It is not denied that the commercial designation of an article, which designation was known at the time of the passage of a tariff act, is the name by which the article should be classified for the payment of duty, and, as is stated, "without regard to their scientific designation and material of which they be made or the use to which they may be applied." Two Hundred Chests of Tea (9 Wheat., 430, 438); Arthur *v.* Morrison (96 U. S., 108); American Net and Twine Company *v.* Worthington (141 *id.*, 468); Hedden *v.* Richard (149 *id.*, 346, 348).

In such a case as this it may be difficult to arrive at the Congressional intent in framing those provisions of the law which we are called upon to construe, particularly as to whether the provision for ultramarine blue in paragraph 52 was intended to include a pigment having the characteristics and limited uses of this gray blue. We take the view that Congress did not so intend. The assessment of 3¾ cents per pound on this merchandise equals over 275 per cent ad valorem upon its appraised value, and the inference is justified that such a rate of duty would be absolutely prohibitive. The advantage

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of the imposition of such duty to the combined interests contending therefor in this case is at once manifest, for it appears in the record evidence before us that Heller & Merz Company and the International Ultramarine Works, the two corporations which manufacture a very large proportion if not all of the ultramarine blue produced in the United States, have agreed to sell their entire output to the Ultramarine Company. It also appears that the latter company is officered and controlled by the same persons who officer and control the Heller & Merz Company and the International Ultramarine Works, and is the selling company of all ultramarine blue made by said companies. With such combined control of domestic ultramarine blue of all grades and values and the imposition of a rate of duty exceeding 275 per cent ad valorem on a low-grade pigment, such as this blue gray, the advantage to the interests pressing this case is readily manifest, and such advantage would, in our opinion, be far in excess of that which Congress intended to give; and we do not think upon any reasonable construction of the law would the conclusion be justified that the merchandise here involved is the ultramarine blue of commerce intended to be classified under the language of paragraph 52.

We therefore find as fact that the blue gray pigment in question is not ultramarine blue, but is a paint pigment; and our conclusion is that the appraiser's original return and advisory classification was correct, and that the merchandise is therefore subject to duty at the rate of 30 per cent ad valorem, under the provisions of paragraph 58, as claimed.

In all other respects the protest is overruled and the decision of the collector is reversed accordingly.

(T. D. 28295—G. A. 6637.)

Precious stones—Reconstructed emeralds.

Imitation emeralds, composed severally of two pieces of aquamarine or beryl cemented together, green coloring matter applied between the stones producing the tint naturally pertaining to the emerald, are not excluded by the process of cementing and coloring from classification under paragraph 435 of the present tariff act. They are dutiable at 10 per cent ad valorem thereunder, and not at 20 per cent ad valorem under section 6 of said act.—Erhardt *v.* Hahn (55 Fed. Rep., 273) and G. A. 6285 (T. D. 27108) cited.

United States General Appraisers, New York, June 29, 1907.

In the matter of protest 180397 of L. Heller & Sons against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The question involved in this protest is whether or not two pieces of aquamarine or beryl, cemented together, green coloring matter between the stones giving to the completed article the appearance of an emerald, is dutiable as

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assessed by the collector at 20 per cent ad valorem as an article not enumerated in the tariff, in accordance with the provision of section 6 of the tariff act of 1897, or at 10 per cent ad valorem as a precious stone, under paragraph 435.

Aquamarine and beryl are concededly precious stones; and it only remains to determine whether a process of manufacture whereby one description of precious stones is made to imitate another removes the former from classification under paragraph 435. The United States court of appeals, second circuit, in affirming the decision of the lower court in Erhardt *v.* Hahn (55 Fed. Rep., 273), said—

> * * * If it could be shown that these articles at the date of the tariff act were bought and sold as precious stones or were commercially known as such, then no doubt they would have to fall under that classification for duty.

We think this reasoning disposes of the issue presented in this case. We find the merchandise is precious stones, so bought and sold, and known as such commercially, and that the fact that they have been painted does not affect the result. See G. A. 6285 (T. D. 27108).

In addition to the so-called reconstructed emeralds the protest covers certain artificial or reconstructed rubies as well, such as were the subject of G. A. 6336 (T. D. 27278).

Based upon our findings, we hold that the merchandise is dutiable at 10 per cent ad valorem under paragraph 435.

The protest is accordingly sustained, the collector's decision being reversed.

(T. D. 28296—G. A. 6638.)

Metal figures not toys.

Metal figures or nippes, representing various kinds of animals, such as horses, dogs, deer, etc., single and in groups, some of which have pin or ash trays attached, are dutiable as articles of metal, not specially provided for, under paragraph 193, tariff act of 1897, and not as toys under paragraph 418.—Samstag *v.* United States (T. D. 28261) cited and followed.

United States General Appraisers, New York, June 29, 1907.

In the matter of protests 244239, etc., of Samstag & Hilder Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* These protests relate to the assessment of duty on metal figures or nippes, at the rate of 45 per cent ad valorem, as articles of metal not specially provided for, under the provisions of paragraph 193, tariff act of 1897. The importers claim that duty should properly have been assessed at the rate of 35 per cent, as toys, under the provisions of paragraph 418 of said act.

These metal figures or nippes represent various kinds of animals, such as horses, dogs, deer, etc., single and in groups, some of which

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have pin or ash trays fastened to their forelegs. They are known in trade as metal novelties, and serve generally a decorative purpose, as mantel, table, or cabinet ornament. Such articles are not intended nor designed for the amusement of children, and are not toys within the meaning of the tariff provisions, paragraph 418. The assessment of duty complained of is correct, and is in accordance with the past decisions of the Board, notably Abstract 12484 (T. D. 27550), recently affirmed by the circuit court, Samstag *v.* United States (T. D. 28261). At the hearing of the Samstag case before the Board, the importers attempted to distinguish metal figures invoiced at more and others iviconed at less than a certain price per gross. They confined their claim to the cheap figures; but, as held in that case, in goods of this character the price is absolutely no criterion by which to judge their classification for duty. That must depend on their character and use. The court having affirmed this case, in effect affirmed as well such ruling of the Board. Following it, we overrule these protests and affirm the decision of the collector in each case.

(T. D. 28297—G. A. 6639.)

Beads composed in chief value of wax.

Glass beads containing wax in one of the following proportions, viz, one half, three-quarters, or wholly filled therewith, are composed in chief value of wax and dutiable at 25 per cent ad valorem under paragraph 448, tariff act of 1897.—G. A. 6625 (T. D. 28254) modified.

United States General Appraisers, New York, June 29, 1907.

In the matter of protest 139376 of H. Wolff & Co. against the assessment of duty by the collector of customs at the port of New York

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

SHARRETTS, *General Appraiser:* The goods here in question are invoiced as wax beads. Duty was assessed thereon at the rate of 45 per cent ad valorem under paragraph 112, the importers claiming 25 per cent ad valorem as the rate applicable thereto under the provision of paragraph 448 of the tariff act of 1897.

In G. A. 6625 (T. D. 28254) this Board after a careful investigation held that as to glass beads one-half, three-quarters, or wholly filled with wax, glass was not the component material of chief value. The correctness of this proposition has since been confirmed, but we are now convinced that the classification of goods such as are now in question can not be determined by the value thereof. The United States examiner has submitted for our consideration samples of imitation pearl beads highly polished, and other beads colored and graduated as to size, all invoiced at a price exceeding 25 francs per gross strings, and which contain but a small quantity of wax, if any. As to these beads, glass is unquestionably the component material of chief value.

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We therefore modify the views expressed in G. A. 6625 (*supra*) with regard to the classification of beads invoiced as "beads," "pearl beads," or "wax beads," and now hold that all such beads one-half, three-quarters, or wholly filled with wax contain wax as the component material of chief value. As to all other beads invoiced as described, without regard to invoice value or country whence exported, we hold they are composed in chief value of glass, and hence are dutiable at 45 per cent ad valorem under paragraph 112.

The goods here in question are wholly filled with wax, and we sustain the protest relative thereto, to which extent only the decision of the collector is reversed.

(T. D. 28298—G. A. 6640.)

Balata belting.

Belting composed of balata and cotton, balata chief value, is dutiable as manufactures of india rubber at the rate of 30 per cent ad valorem under paragraph 449, tariff act of 1897.—G. A. 5201 (T. D. 23966); G. A. 6164 (T. D. 26751); Abstract 12042 (T. D. 27458); G. A. 6498 (T. D. 27780); Hague *v.* United States 73 (Fed. Rep., 810) cited, and Earle *v.* United States (T. D. 27977) followed.

United States General Appraisers, New York, June 29, 1907.

In the matter of protest 209601 of New York Leather Belting Company against the assessment of duty by the collector of customs at the port of New York.

Before Board 1 (LUNT, SHARRETTS, and MCCLELLAND, General Appraisers).

MCCLELLAND, *General Appraiser:* The merchandise which is the subject of this protest is invoiced as "Vollrath's balata belting." It was returned by the appraiser as a manufacture of gutta-percha and cotton, gutta-percha being the component material of chief value, and duty was assessed at the rate of 35 per cent ad valorem under the provisions of paragraph 450, tariff act of 1897.

The grounds of objection to the collector's classification are stated in the protest as follows:

The collector erred in assessing duty on said merchandise at the rate of 35 per cent ad valorem. We claim that the same is dutiable directly, or by similitude, or according to component material of chief value, by virtue of the provisions of section 7 of the tariff act of July 24, 1897, either at 20 per cent ad valorem under paragraph 438 of said act as band or belting leather or other leather not specially provided for, or at 30 per cent ad valorem under paragraph 449, as manufactures of which india rubber is the component material of chief value, not specially provided for, or at 20 per cent ad valorem under paragraph 89, or at 20 per cent ad valorem under section 6 of said act.

When the protest was called for hearing, it was submitted for decision on the report of the appraiser. The special report of the appraiser on the protest on which said submission is made reads:

The merchandise in question consists of what is known commercially as balata belting, and is composed of balata and cotton, balata chief value. It was returned for duty by reason of similitude clause, as gutta-percha chief value.

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The said paragraph under which duty was assessed reads as follows:

Manufactures of leather, finished or unfinished, manufactures of fur, gelatin, gutta-percha, human hair, ivory, vegetable ivory, mother-of-pearl and shell, plaster of paris, papier mache and vulcanized india-rubber, known as "hard rubber," or of which these substances or either of them is the component material of chief value, not specially provided for in this Act, and shells engraved, cut, ornamented, or otherwise manufactured, thirty-five per centum ad valorem.

In G. A. 5201 (T. D. 23966), the Board appears to have had before it the classification of merchandise of a somewhat similar character, at least adapted to a similar use. In that case, as in the case at bar, duty was assessed on the merchandise at the rate of 35 per cent ad valorem as manufacture of gutta-percha or of which gutta-percha was the component material of chief value; and the claim of protestants was that duty should have been assessed on the merchandise at the rate of 30 per cent as manufactures of india rubber, or of which india rubber was the component material of chief value, or in the alternative at 20 per cent ad valorem under section 6 as a nonenumerated manufactured article. It appears, however, from the language used in said G. A. 5201, that the article resembling the merchandise here involved was made of cotton, tuno rubber, and balata, and that the relative value of the rubber and balata were about the same, each of these two substances being of greater value than the cotton contained in the merchandise. The only question, so far as this merchandise is concerned, which seems to have been considered by the Board, was as to whether the similitude clause should be applied to make the article subject to duty under the provisions of paragraph 449, as manufacture of india-rubber, or the provisions of paragraph 450 so as to make it subject to duty as manufacture of gutta-percha.

The Board has since held in G. A. 6164 (T. D. 26751) that balata, rubber, and gutta-percha are distinct articles of commerce, and that for the purposes of classification balata can not be regarded as directly within the provisions of the tariff act for either gutta-percha or india rubber. The article, which was the subject of G. A. 6164 (*supra*), was held to be balata in the crudest form in which it is imported; and there being no provision *eo nomine* therefor in the existing law and the application of the similitude clause of section 7 to the provisions for crude gutta-percha and crude india rubber in the free list being barred by the law itself, the merchandise was held to be subject to a duty at the rate of 10 per cent ad valorem as a nonenumerated unmanufactured article under the provisions of section 6. In this case (G. A. 6164) the Board, among other things, said:

Both the collector's classification and the importers' claim are evidently based upon the idea that balata is so much akin to rubber that for tariff purposes they are the

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same; but we think that while they are sufficiently alike to warrant the application of the similitude clause to articles manufactured from balata, there is a marked difference between gutta-percha, rubber, and balata in the crude state.

Under this reasoning that the article involved was wholly made of balata, it would remain but to determine whether the rate of duty to be levied thereon at the rate of 35 per cent ad valorem under the provisions of paragraph 450 as a manufacture of gutta-percha by similitude, or at the rate of 30 per cent ad valorem under the provisions of paragraph 449 as a manufacture of rubber by similitude; but as it is made of two materials and the component of chief value not being provided for, we are brought to consider the question as to whether the similitude clause may be applied in such a case.

In Abstract 12042 (T. D. 27458), the Board, following the conclusion in G. A. 6164 (T. D. 26751) *supra*, held that crude balata was a nonenumerated unmanufactured article, and on appeal to the United States circuit court that decision of the Board was reversed (Earle *v.* United States, T. D. 27977), the court holding that balata is in fact crude india rubber and commercially known as such, and this judgment of the court has been acquiesced in by the Government.

It therefore follows that the similitude clause of section 7 may not be applied to merchandise similar to that here involved; for since balata, so called, is the component of chief value, it is apparent from the court's ruling in the Earle case (*supra*) that the merchandise, if dutiable according to the component material of chief value, must be held to be specially provided for under paragraph 449 and subject to duty accordingly at the rate of 30 per cent ad valorem.

In G. A. 6498 (T. D. 27780), the Board, in passing upon certain beltings of metal, cotton, and india rubber, said:

Paragraph 320 provides denominatively for beltings made of cotton, whether composed in part of india rubber, or otherwise, but that does not mean that it embraces all beltings that include india rubber as a component. It is true that within the rule laid down in Hague *v.* United States (73 Fed. Rep., 810), belting made of cotton and india rubber is dutiable under that paragraph, even if india rubber be the component material of chief value, as the precise language of the provision includes such goods. * * *

And it would seem as though this language was broad enough to warrant the conclusion that the belting here involved should be classified under the provisions of paragraph 320 and subjected to the rate of duty therein provided for, but such a conclusion should not be reached without considering whether the intent of Congress is not manifest that the merchandise should be otherwise classified. Considering the Hague case (73 Fed. Rep., 810), together with the paragraphs herein referred to in the tariff acts of 1890 and 1894 and paragraph 328 of the existing tariff, we are led to conclude that the group or class of articles designed to be covered thereby are such as

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would reasonably fall within the cotton schedule; and such we think may not be said of a machinery belting made in the largest proportion of gutta-percha, india rubber, or balata, which we believe under the doctrine of *ejusdem generis* to be excluded from classification under any provision found in the cotton schedule.

It follows, therefore, that the claim in the protest for a duty at the rate of 30 per cent ad valorem under the provisions of paragraph 449 must be sustained, all other claims being overruled, and the decision of the collector reversed accordingly.

The decisions cited, in so far as they conflict with this ruling, are modified to conform herewith.

(T. D. 28299—G. A. 6641.)

Invalidity of reappraisement—Failure to consider evidence.

Certain merchandise imported at the port of Philadelphia was advanced by the local appraiser to make market value, whereupon the importers duly filed an appeal to reappraisement. The testimony of the importers was taken at St. Louis before a General Appraiser, and subsequently the Government introduced evidence in support of the appraised value at Philadelphia. This second hearing was before another General Appraiser, who was not aware that the importers had introduced evidence in support of their claim, and who decided the case without knowing of or considering the importers' evidence, treating the absence of the importers from the Philadelphia hearing as a default. *Held*, that the importers did not have the benefit of a valid reappraisement as provided in section 13, tariff act of 1890; that the decision announced in the case was made inadvertently and without there having been a trial of the issues, and that it may be regarded as if it had not been announced, all parties to be relegated to the positions they occupied prior to the announcement of a decision.—United States *v.* Curnen & Steiner (146 Fed. Rep., 45; T. D. 27262) followed.

DE VRIES, *G. A.*, dissents.

United States General Appraisers, New York, June 29, 1907.

In the matter of protest 248224 of Chas. M. Taylor's Sons against the assessment of duty by the collector of customs at the port of Philadelphia.

Before Board 2 (FISCHER, HOWELL, and DE VRIES, General Appraisers).

FISCHER, *General Appraiser:* This protest concerns the validity of a reappraisement proceeding before this Board. It appears that the appraiser at Philadelphia added to make market value on certain guns imported at that port in the name of Chas. M. Taylor's Sons, custom-house brokers, for the Norwell-Shapleigh Hardware Company, St. Louis. The importers duly filed an appeal to reappraisement as provided in section 13, act of June 10, 1890; the collector forwarded all the papers in the case to the Board; and, in accordance with the request of the importers, a hearing was held at St. Louis, where the place of business of the ultimate consignees is located. At that hearing, which was held on November 13, 1906, by General Appraiser Somerville, testimony was introduced by the importers in support of

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the appeal and their contention that the invoice price was the correct market value. The following memorandum is found attached to the papers:

No. 42224. Testimony taken at St. Louis on November 13, 1906. Case continued for further evidence at Philadelphia, per request of special agent. H. M. Somerville, General Appraiser. November 13, 1906.

Pursuant to this request another hearing in the case was held at Philadelphia, the port where the goods were entered and originally appraised, and testimony in support of the appraised value was there given This latter hearing was presided over by General Appraiser Hay, and took place on December 10, 1906. It appears further from the testimony before us and from the record of the reappraisement that on December 12, 1906, General Appraiser Hay rendered a decision sustaining the advance made by the local appraiser, and that his decision was made without consideration of the evidence previously offered by the importers, and that he did not, in fact, know of the existence of such evidence or that the importers had presented their case to another General Appraiser. The testimony the importers had given is not to be found among the papers. The validity of the reappraisement thus decided is now questioned by the importers, who contend that they have not been allowed the full measure of the remedy provided by the law (sec. 13, act of June 10, 1890), which grants to an importer the right of an appeal to a General Appraiser if he is dissatisfied with the appraisement made by the local appraiser. The bestowal of this right would seem to imply that the importer also has a right to have the evidence he has offered in response to the opportunity afforded him taken into consideration in the decision of the case, as well as that offered by the Government. In the case at bar the importers ask not only that the reappraisement proceeding had been declared to be invalid, but that they be granted the opportunity to be heard, as contemplated by the statute cited.

The General Appraiser who heard the importers' case did not render a decision, and the General Appraiser who did render the decision did not hear the importers' case. The decision was therefore made without the importers having been heard, and they have not had their day in court. Where a complainant has been heard by one tribunal and the defendant by another, which then proceeds to decide the case, it can scarcely be said that the issues have been heard; and such a proceeding can not fairly be called a trial. That was what happened in this case, and our chief concern is to determine how the importers may be put in a position to enjoy the right to a valid reappraisement such as is contemplated by the statute, and of which they have undoubtedly been deprived. That the importers are not divested of their right to a valid reappraisement by reason

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of the fact that reappraisement proceedings which turn out to have been invalid have been held, is affirmed by Judge Lacombe in the opinion of the circuit court of appeals in the case of United States *v.* Curnen & Steiner (146 Fed. Rep., 45; T. D. 27262):

> The importer is of course entitled to a reappraisement if he gives notice of dissatisfaction. If that is denied him by refusal of the General Appraiser to act at all, or to comply with jurisdictional requirements, the importer may have an appropriate remedy to obtain such reappraisement. But until there is such reappraisement as will take the place of an original, valid, and proper appraisement it is difficult to understand upon what theory it can be vacated or set aside.

The court did not indicate just what is the "appropriate remedy to obtain such reappraisement" which it states the importer may have, and we have been cited to no precedent which points it out.

Counsel for the Government contends that the importers' remedy in this case was an appeal to a Board of three General Appraisers. It is true that such a Board could have passed upon the merits of the case; but the query is whether the importers did not have the absolute right to a valid reappraisement by a single General Appraiser, as the law provides, before appealing to a Board of three. To hold otherwise would result in cutting off a trial by a lower tribunal. It is no answer to the importers' appeal here to say that they might have taken a different proceeding. It is well settled that if a reappraisement is invalid by reason of jurisdictional defects or illegality of procedure the importers may have a remedy by protest, as provided in section 14 of the administrative act.

It will be noted that the prayer of the importers in this case is entirely different from the contention urged by the importers in the Curnen case (*supra*). There the importers demanded that the reappraisement proceeding be declared to be void, and that the basis for the assessment of duties be relegated to their entered value; while in the case at bar the importers simply ask that they be restored to the position they were in when the filed their notice of dissatisfaction with the appraisement of their goods made by the local appraiser. It would seem that there would be no unfairness to either party by allowing a reappraisement *de novo*, for the Government could then produce its testimony and the importers would be getting no more than what the statute allows them, and of which they have been unintentionally deprived through inadvertence. It would be quite different if the importers asked that their entered value be sustained by setting aside the reappraisement proceedings; for the appraisement made by the local appraiser has not been attacked in any way, and appears to have been made in a legal manner. It would be equally wrong, however, to set aside the reappraisement proceedings, and to hold that the original appraisement is final. As already stated, the importers would thereby be deprived of the right to a reappraisement conferred by section 13 of the administrative

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act, which right can not legally be taken from them either by accident or design.

We are of opinion that there was no legal or valid reappraisement of the merchandise covered by this appeal, and that the importers are still in the position in which they were when they had submitted their evidence in support of the correctness of the entered value of the goods, just as if no decision of the case had been made by a General Appraiser. We are of opinion that the protest sufficiently and clearly sets out the proper claim.

The appeal for reappraisement should, together with all the papers in the case, be remanded to a General Appraiser, to the end that he shall hear both sides, and the evidence offered by them shall be considered, and a decision based on all of said evidence shall be formulated.

The protest is sustained and the decision of the collector assessing duties on the basis of the appraised value is reversed, with instructions to withhold the reliquidation of the entry until the conclusion of the reappraisement proceedings.

DISSENTING OPINION.

DE VRIES, *General Appraiser:* I dissent. The facts in this case are not disputed. Certain guns were imported by the Norwell-Sharpleigh Hardware Company, of St. Louis, Mo., and entered at the port of Philadelphia September 25, 1906. The local appraiser advanced the value. From this appraisement timely appeal was taken by the importers under the provisions of section 13, customs administrative act of 1890, to a single General Appraiser. The collector, in accordance with the provisions of said section, forwarded the papers to the office of the United States General Appraisers at New York. Thereafter a written request that the importers be given an opportunity to submit evidence in St. Louis to a General Appraiser was granted. Accordingly the case was regularly docketed at the port of St. Louis, and due notice in accordance with the regulations was given the importers of such hearing; and on November 13, 1906, General Appraiser Somerville took testimony in St. Louis in said case, at which the importers appeared. The case was then continued for further hearing at the port of Philadelphia.

Thereafter said case was regularly docketed for hearing on December 10, 1906, at the port of Philadelphia, and due notice, as prescribed by the regulations, given the importers of such hearing. On said date testimony was taken before General Appraiser Hay at said port on behalf of the Government. None was offered by the importers. They did not appear, though they received notice of such hearing and ample time was afforded for appearance. On December 12, 1906, General Appraiser Hay rendered decision in the case.

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Due notice of such decision, as prescribed by the law, was given and received by the importers. This notice was in regular form and advised them, among other things, that "if you appeal from this appraisement it will be necessary to do so within two official days after the day of this notice." The importers did not avail themselves of this notice or of their right to appeal to a Board of three General Appraisers, but upon liquidation commenced this proceeding under the provisions of section 14 of the customs administrative act.

The absence of any notice of either hearing is not asserted. That such were duly and regularly given is admitted. The sole point made by the importers is that in view of the fact that General Appraiser Hay was not advised of the taking of the testimony at the port of St. Louis by General Appraiser Somerville and proceeded to the decision without an examination of the same the decision is open to question in this proceeding.

Section 13 of the customs administrative act provides that—

> The decision of the appraiser * * * or of the general appraiser in cases of reappraisement, shall be final and conclusive as to the dutiable value of such merchandise against all persons interested therein, unless the importer, owner, consignee or agent of the merchandise shall be dissatisfied with such decision, and shall, within two days thereafter, give notice to the collector, in writing, of such dissatisfaction. * * *

That is to say, unless appeal is taken to a Board of three General Appraisers, the decision of the single General Appraiser becomes final and conclusive and is not the subject of review in any court.

The Supreme Court, however, in the case of Passavant & Co. (169 U. S., 21), and other courts, have maintained the jurisdiction of a Board of three General Appraisers acting under the provisions of section 14 of said act, and of the courts upon appeal from such decision, to review the decision of a single General Appraiser or a Board of three General Appraisers, where it appears they proceeded without jurisdiction. The measure of the authority of the Board, and, consequently of the courts, is aptly stated in the case of United States *v.* Curnen (T. D. 27262), wherein the circuit court of appeals for the second circuit states:

> No one disputes the proposition that a decision as to the valuation or appraisement of imported merchandise can not be reviewed under section 14, *except for jurisdictional defects.*

Jurisdiction is power to hear and determine. Jurisdiction to hear in this case consists of giving due notice to the importer of the hearing.

Inasmuch, however, as the Board of General Appraisers and a single General Appraiser is a special tribunal and derives jurisdiction from compliance with the statutory requirements creating it, the proceedings are without jurisdiction unless the Board or the single General Appraiser has proceeded according to statute. In such cases the mode is the measure of the power, and any deviation therefrom is without authority of law. It being conceded, however, that due

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notice has been given the importer of a hearing, and the General Appraiser having proceeded in accordance with the law in his ascertainment of facts, his decision in such a case is not illegal, although it may have been irregular. The distinction must be observed between an illegal or void decision and a decision which is irregular and voidable. In the one case the General Appraiser has proceeded without jurisdiction. In the other case he has proceeded within his jurisdiction but in an irregular manner. Any infraction of one of the statutory limitations upon the General Appraiser's powers would amount to an illegality; but there being none such after due notice, any error would amount to no more than an irregularity.

In this case no statute is pointed out, and no regulation of the Treasury Department is offered, which it is asserted was either infracted or not followed by the General Appraiser in reaching decision. The fact that the General Appraiser rendering the decision overlooked testimony taken by another General Appraiser does not amount to an illegality. The sum and substance of the irregularity alleged is that a part of the testimony in the record was not considered by the General Appraiser. The fact that such testimony was taken by another General Appraiser in a more deliberate manner does not change the case. It did not differ from other testimony received in such cases—sometimes *ex parte* on affidavits—sometimes in the form of reports of special agents gathered abroad, and sometimes in the form of letters, bills, receipts, etc. It is a common and necessary practice of the Board to gather data by some other officer than the deciding one, as do courts by depositions. It would be no different case whether the failure to examine part of the testimony be by design or inadvertence, as in this case. If it is to be held that the failure of a General Appraiser to examine a part of the testimony in the record, whether by design or inadvertence, nullifies the decision and renders it void as without jurisdiction, then we may expect that every decision of a single General Appraiser or a Board of General Appraisers in reappraisement proceedings would be assaulted upon that ground under the provisions of section 14. It would be only one step further in the same direction to hold that not sufficient weight was given to one class of testimony as distinguished from another.

The courts have uniformly held that the weight to be given evidence or whether it is considered at all in a reappraisement case by an appraising officer is not the subject of review by the courts.

This point was precisely passed upon by the United States Supreme Court in the case of Hilton *v.* Merritt (110 U. S., 97). The plaintiff's counsel claimed the right to go to the jury upon—

5. *Whether the appraiser followed the evidence before him or disregarded it.*

The court said (at p. 106):

We are of opinion, therefore, that the valuation made by the customs officers was not open to question in an action at law as long as the officers acted without fraud and

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within the power conferred on them by the statute. The evidence offered by the plaintiffs, and ruled out by the court, tended only to show carelessness or irregularity in the discharge of their duties by the customs officers, but not that they were assuming powers not conferred by the statute, and the questions which the plaintiffs proposed to submit to the jury were, in the view we take of the statute, immaterial and irrelevant.

This enunciation by the court received express approval in the case of Auffmordt *v.* Hedden (137 U. S., 310), where the Supreme Court further, at page 325, said that it was not allowable, in a proceeding at law, to review the decision of a General Appraiser, "to try before the jury the question as to the actual value of the goods, and *whether the Appraisers followed the evidence before them or disregarded it.*"

We must not lose sight of the fact that the decision was rendered by General Appraiser Hay; that due notice of this hearing was given; that due notice of his decision was given and in each case admittedly received by the importer; and that the liquidation here assaulted by this protest was one made after such notice to the importer of the hearing by and decision of the General Appraiser. Due notice having been given the importer and ample time allowed for appearance, and due notice of decision, he could have appealed to a Board of three General Appraisers. Upon such appeal a voidable decision could be reviewed and irregularities corrected. The General Appraiser having had jurisdiction, however, and not having proceeded in contravention of any statute or regulation, his decision having been given, and regular notice thereof afforded the importer, the liquidation in this case was not illegal, if voidable. The duty is incumbent upon the importer to respond to notices sent of such hearings and present his case. Having failed to do this, and due notices having been given, and the General Appraiser not having proceeded contrary to any statute or regulation, and the statutory requirements having been observed, it would seem the liquidation is valid and the protest is not well taken.

In this view I have expressed no opinion as to the remedial character of the mandate of the majority opinion.

(T. D. 28300.)

Abstracts of decisions of the Board of General Appraisers.

Board 1.—Lunt, Sharretts, and McClelland. *Board 2.*—Fischer, Howell, and De Vries. *Board 3.*—Waite, Somerville, and Hay.

No. 15907.—Figured Cotton Cloth.—Protest 244310 of John Taylor Dry Goods Company against the assessment of duty by the surveyor of customs at the port of Kansas City. Before Board 2, June 21, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified as figured cotton cloth under paragraph 313, tariff act of 1897.

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No. 15908.—JUTE BAGGING.—Protests 252570, etc., of Sam'l Thompson's Nephew & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6607 (T. D. 28218), relating to jute bagging.

No. 15909.—WAFERS.—Protests 175374, etc., of Goldberg, Bowen & Co. against the assessment of duty by the collector of customs at the port of San Francisco. Before Board 3, June 21, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of G. A. 6591 (T. D. 28172), relating to wafers.

No. 15910.—CLERICAL ERROR.—Protest 244848 of Wilfred Schade & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 21, 1907. Opinion by Somerville, G. A.

The importers contended that they should be relieved from the penal duties accruing by reason of the failure to include the cost of coverings of the merchandise in the invoice value, alleging that this omission was due to a clerical error. The protests were overruled, the Board finding the testimony to be conflicting and otherwise unsatisfactory.

No. 15911.—GAUGE OF OLIVE OIL.—Protest 243128 of H. J. Heinz Company against the assessment of duty by the surveyor of customs at the port of Pittsburg. Before Board 3, June 21, 1907. Opinion by Somerville, G. A.

Protest sustained on the authority of G. A. 6576 (T. D. 28072), relating to the gauge of olive oil.

No. 15912.—INCOMPLETE COLLAR BUTTONS.—Protests 225185, etc., of King Collar Button Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 21, 1907. Opinion by Somerville, G. A.

The merchandise was held to have been properly classified as parts of collar or cuff buttons under paragraph 414, tariff act of 1897.

No. 15913.—PASTE BUTTONS.—Protests 208698, etc., of B. Blumenthal & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 21, 1907. Opinion by Somerville, G. A.

The protests were sustained to the extent authorized by G. A. 6279 (T. D. 27061), relating to paste buttons.

No. 15914.—PORCELAIN ARTICLES.—Protest 247214 of Dulin & Martin Company against the assessment of duty by the collector of customs at the port of Washington. Before Board 3, June 21, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of G. A. 5336 (T. D. 24424), relating to porcelain articles.

No. 15915.—STEINS.—Protests 243626 of R. Pierson & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 3, June 21, 1907. Opinion by Hay, G. A.

Certain steins were held dutiable as manufactures in chief value of metal under paragraph 193, tariff act of 1897, as claimed by the importers. G. A. 5509 (T. D. 24843) followed.

No. 15916.—PROTESTS ABANDONED.—Protests 159772, etc., and protests 102709, etc., of Hermann Boker & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinions by Fischer, G. A.

Protests abandoned.

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No. 15917.—PROTESTS UNSUPPORTED.—Protests 246987, etc., of H. A. Caesar & Co. *et al.*, protest 248546 of New York Millinery and Supply Company, and protest 248488 of Gartner, Sons & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 21, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 15918.—PROTEST UNSUPPORTED.—Protest 250333 of A. V. Berner against the assessment of duty by the collector of customs at the port of Boston.

Same as No. 15917 (*supra*).

No. 15919.—PROTESTS UNSUPPORTED.—Protests 250163, etc., of J. Kridel Sons & Co. Opinion by Howell, G. A.

Same as No. 15917 (*supra*).

No. 15920.—PROTESTS UNSUPPORTED.—Protests 29816 *h*, etc., of G. Lasagna *et al.* Before Board 3. Opinion by Somerville, G. A.

Same as No. 15917 (*supra*).

No. 15921.—CARBON PAPER.—Protest 253033 of W. H. McEllven against the assessment of duty by the collector of customs at the port of Niagara Falls. Before Board 2, June 22, 1907.

Carbon paper, which was classified as manufacture of paper, under paragraph 407, tariff act of 1897, was claimed to be dutiable as surface-coated paper under paragraph 398.

FISCHER, *General Appraiser:* * * * We find from an examination of the official sample that carbon paper is not a surface-coated paper, and not of the character of such papers so provided for under paragraph 398. The protest is limited to this claim, and must, therefore, be overruled. We are not inclined to accept the classification of carbon paper as a manufacture of paper. On the authority of Dejonge *v.* Magone (159 U. S., 562), we hold that carbon paper is not dutiable at 35 per cent under paragraph 407. It would appear to be a paper not specially provided for within the provisions of paragraph 402, dutiable at 25 per cent; and we find that it is the practice at the port of New York to so classify such merchandise. The decision of the collector will stand.

No. 15922.—POST-CARD ALBUMS.—Protest 252832 of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News. Before Board 2, June 22, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of American News Company *v.* United States (T. D. 27722).

No. 15923.—POST-CARD ALBUMS.—Protests 251069, etc., of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 15921 (*supra*).

No. 15924.—PAPER MATRICES.—Protest 246461 of A. Nielen & Co. against the assessment of duty by the surveyor of customs at the port of Cincinnati. Before Board 2, June 22, 1907. Opinion by Fischer, G. A.

Paper matrices classified as manufactures of paper under paragraph 407, tariff act of 1897, were claimed to be free of duty under paragraph 502, relating to books and pamphlets. Assessment affirmed.

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No. 15925.—HANDMADE TRANSFER PAPER.—Protests 253823, etc., of Edw. Benneche & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 22, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6581 (T. D. 28128), relating to handmade transfer paper.

No. 15926.—PICTORIAL POST CARDS.—Protests 246901, etc., of S. Langsdorf & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 22, 1907. Opinion by Fischer, G. A.

Pictorial post cards classified as printed matter under paragraph 403, tariff act of 1897, were claimed to be dutiable as lithographic prints under paragraph 400. Protests sustained in part. G. A. 6369 (T. D. 27359) followed.

No. 15927.—STATUE FOR PUBLIC MONUMENT.—Protest 204679 of Austin, Baldwin & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 22, 1907. Opinion by Waite, G. A.

As claimed by the importers, a statue imported for a public monument was held free of duty under paragraph 702, tariff act of 1897.

No. 15928.—GAUGE OF OLIVE OIL.—Protests 242346, etc., of Freiria y Compania *et al.* against the assessment of duty by the collector of customs at the port of San Juan. June 22, 1907.

Same as No. 15910 (*supra*).

No. 15929.—PROTESTS FILED TOO LATE.—Protests 220902, etc., of Sobrinos de Yzquierdo & Co. against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, June 22, 1907. Opinion by Somerville, G. A.

The protests were dismissed because not filed in due season.

No. 15930.—BALATA.—Protest 248437 of James E. Odell against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 22, 1907. Opinion by Hay, G. A.

Protest sustained on the authority of Earle *v.* United States (T. D. 27977), relating to balata.

No. 15931.—PROTEST FILED TOO LATE.—Protest 218296 of Oberle & Henry against the assessment of duty by the collector of customs at the port of New Orleans. Opinion by Hay, G. A.

Same as No. 15929 (*supra*).

No. 15932.—SOAPSTONE SQUARES—LAVA.—Protest 206279 of Illinois Central Railroad Company against the assessment of duty by the collector of customs at the port of New Orleans. Before Board 3, June 22, 1907.

So-called soapstone squares, classified as articles composed of a mineral substance under paragraph 97, tariff act of 1897, were claimed to be free of duty under paragraph 614, relating to minerals, crude or not advanced in value or condition. Protest overruled.

HAY, *General Appraiser:* The samples are small blocks, in the form of half cubes, neatly cut, with smooth surfaces. At the hearing the witness for the importers testified that the merchandise is called lava, that it comes from Bavaria, is mined and cut into pieces to adapt it for packing and shipping, the cutting being done by saws. It is used for making gas tips, the stone after importation being milled, sawed, drilled,

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reamed, and finally baked to produce the finished article. The work and skill bestowed upon this article has, in our judgment, taken it out of paragraph 614, and that it should be classified under this paragraph is the only claim made.

No. 15933.—LEGALITY OF REAPPRAISEMENT—SMYRNA WOOL.—Protest 150869 of Carl Grubnau against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, June 22, 1907. Opinion by Hay, G. A.

The importers contended that the reappraisement of washed Smyrna wool was illegal. Protest overruled. Note United States *v.* Curnen (146 Fed. Rep., 45; T. D. 27262).

No. 15934.—GROUND FELDSPAR.—Protests 229274, etc., of Fuerst Brothers & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 22, 1907.

Ground feldspar, classified as an unenumerated manufactured article under section 6, tariff act of 1907, was claimed to be free of duty under paragraph 614 or dutiable as an unenumerated unmanufactured article under said section. Protests overruled. Note G. A. 4921 (T. D. 23028).

HAY, *General Appraiser:* * * * Paragraph 614 reads as follows:

614. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this Act.

Feldspar is a mineral ore, but the fact that the importation here in question is ground excludes it from paragraph 614. The question to be decided is whether this grinding makes of the commodity a manufactured article. If it is not manufactured, then it is crude and free under paragraph 614; so the same consideration which excluded it from paragraph 614 excludes it from the low rate under section 6.

No. 15935.—BRISTLES.—Protest 222242 of Polack & Goldstone against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 22, 1907.

The protest related to bristles reported by the local appraiser to be tied up in bunches with the root and flag ends placed in one position. The importers contended that they were improperly classified under paragraph 411, tariff act of 1897, relating to bristles assorted, bunched, or prepared, and that they were free of duty under paragraph 509, relating to crude bristles not sorted, bunched, or prepared. Protest sustained.

HAY, *General Appraiser:* * * * It would seem clear from the reading of paragraph 411 that if bristles have been bunched before imported they are dutiable under said paragraph; and such was the holding of the Board in Pushee's case, G. A. 5483 (T. D. 24797). From the testimony in this case, however, we are of the opinion that there was no such bunching as would bring the bristles within the purview of this paragraph. From the testimony we conclude that a few of the bristles were tied together with a string and the majority of them loose; but it does not show that even those tied with string were in any way regularly bunched.

No. 15936.—PROTESTS ABANDONED.—Protests 246979, etc., of H. A. Caesar & Co. *et al.* June 22, 1907.

Same as No. 15916 (*supra*).

No. 15937.—PROTESTS UNSUPPORTED.—Protests 249712, etc., of Carleton & Moffat *et al.* Before Board 3. Opinion by Somerville, G. A.

Same as No. 15940 (*infra*).

No. 15938.—PROTEST UNSUPPORTED.—Protest 242340 of Stengel & Rothschild against the assessment of duty by the collector of customs at the port of Newark. Before Board 3. Opinion by Hay, G. A.

Same as No. 15940 (*infra*).

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No. 15939.—PROTEST UNSUPPORTED.—Protest 247556 of C. A. Massey against the assessment of duty by the collector of customs at the port of Plattsburg. Before Board 3. Opinion by Hay, G. A.

Same as No. 15940 (*infra*).

No. 15940.—PROTESTS UNSUPPORTED.—Protests 248589, etc., of R. H. Macy & Co. *et al.*, protests 250151, etc., of Fisher & Thompson *et al.*, protests 195542, etc., of Frank A. Tasker *et al.*, and protests 246912, etc., of Thos. Meadows & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 22, 1907. Opinions by Fischer, G. A.

Protests overruled for want of merit.

No. 15941.—PROTEST UNSUPPORTED.—Protest 250106 of Batten, Neumann & Co. Before Board 1. Opinion by Lunt, G. A.

Same as No. 15940 (*supra*).

No. 15942.—FIGURES WITH GLASS DOME.—Protest 248200 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

The goods in controversy consisted of paste figures surrounded by artificial flowers, mounted on a stand and covered by a glass case. They were classified as blown glassware under paragraph 100, tariff act of 1897, and were held dutiable as manufactures in chief value of glass under paragraph 112, as claimed by the importers.

No. 15943.—TOY NECKLACES.—Protest 227160-28407 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6297 (T. D. 27156) bead necklaces for children were held dutiable as toys under paragraph 418, tariff act of 1897, as claimed by the importers.

No. 15944.—STRUNG BEADS.—Protests 108818, etc., of Goldberg & Co. *et al.* and protests 9496 *h*, etc., of Albert Lorsch & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinions by Sharretts, G. A.

G. A. 6610 (T. D. 28221) followed, relating to strung beads.

No. 15945.—PROTESTS INSUFFICIENT.—Protests 179071, etc., of American Express Company against the assessment of duty by the collector of customs at the port of Boston. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

It appeared that the merchandise had been improperly classified, but as the importers failed to make the correct contention, the protests were overruled.

No. 15946.—PROTEST INSUFFICIENT.—Protest 179101-20385 of G. W. Sheldon & Co. against the assessment of duty by the collector of customs at the port of Chicago.

Same as No. 15945 (*supra*).

No. 15947.—WAX BEADS.—Protests 120395, etc., of M. Gugenheim *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6625 (T. D. 28254), relating to wax beads.

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No. 15948.—WATCH BRACELETS.—Protests 244274, etc., of F. B. Vandegrift & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6015 (T. D. 26285), relating to watch bracelets.

No. 15949.—CELLULOID HAIRPINS—SILK BELTING—BEADED ARTICLES.—Protest 227162-23411 of C. D. Stone & Co. against the assessment of duty by the collector of customs at the port of Chicago. Before Board 1, June 24, 1907. Opinion by Sharretts, G. A.

The Board held the articles in controversy to have been properly classified—certain hairpins on cards as celluloid articles under paragraph 17, tariff act of 1897; elastic belting ornamented with metal points as silk belting under paragraph 389, and beaded necklaces as beaded articles under paragraph 408.

No. 15950.—ORNAMENTS.—Protests 47339*f*, etc., of Geo. Borgfeldt & Co. and protests 248613, etc., of A. Steinhardt & Bro. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinions by Sharretts, G. A.

Protests sustained as to various ornaments on the authority of G. A. 6874 (T. D. 27382).

No. 15951.—PINS.—Protests 248117, etc., of Kraemer & Foster and protests 238470, etc., of Pratt & Farmer Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinions by Sharretts, G. A.

The protests were sustained on certain pins to the extent authorized by G. A. 6139 (T. D. 26679).

No. 15952.—ORNAMENTS—PINS—MANUFACTURES OF METAL—IMITATION PEARLS.—Protests 28347*f*, etc., of B. Altman & Co. and protests 3480*h*, etc., of A. & H. Veith *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinions by Sharretts, G. A.

The protests in question related to ornaments of various kinds—pins, hand bags, imitation pearls, etc. The importers' contentions were disposed of in harmony with the following authorities: G. A. 6374 (T. D. 27382); G. A. 6139 (T. D. 26679); Abstract 5635 (T. D. 26248); Tiffany *v.* United States (T. D. 25316); Bader *v.* United States (116 Fed. Rep.. 541); G. A. 6088 (T. D. 26554).

No. 15953.—JEWELRY—BEADED ARTICLES.—Protests 251705, etc., of American Bead Company *et al.*, protests 52272*f*, etc., of Geo. Borgfeldt & Co., and protests 252689, etc., of A. C. Bosselmann & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 24, 1907. Opinions by Sharretts, G. A.

Protests overruled, the Board holding the merchandise to have been properly classified as jewelry and beaded articles.

No. 15954.—PERIODICALS.—Protest 252835 of Mrs. A. J. Bolton against the assessment of duty by the collector of customs at the port of Rochester. Before Board 2, June 24, 1907. Opinion by Fischer, G. A.

The merchandise was claimed to be free of duty under paragraph 621, tariff act of 1897, relating to periodicals issued within six months of the time of entry. The entry not having been made within the period mentioned, the Board overruled the protest.

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No. 15955.—PAPER HANGINGS, HAND DECORATED.—Protests 249981, etc., of F. J. Emmerich Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 24, 1907. Opinion by Fischer. G. A.

Protests overruled on the authority of G. A. 6586 (T. D. 28157), relating to paper hangings.

No. 15956.—FIGURED COTTON CLOTH.—Protest 253268 of Bassett, McNab & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 24, 1907. Opinion by De Vries, G. A.

Protest overruled on the authority of G. A. 6484 (T. D. 27728), relating to figured cotton cloth.

No. 15957.—COTTON CLOTH.—Protest 251554 of H. E. Frankenberg Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 24, 1907. Opinion by De Vries, G. A.

As claimed by the importers, the merchandise, which was classified as hemstitched skirting, was held dutiable as bleached cotton cloth under paragraph 306, tariff act of 1897.

No. 15958.—EMBROIDERED GOODS.—Protest 250548 of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 24, 1907. Opinion by De Vries, G. A.

The merchandise was held to have been properly classified under paragraph 339. tariff act of 1897, relating to embroideries.

No. 15959.—SILK FABRICS.—Protest 225190 of J. Kridel, Sons & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 24, 1907. Opinion by De Vries, G. A.

Goods classified as composed in chief value of cotton were held dutiable as silk fabrics under paragraph 387, tariff act of 1897, as claimed by the importers.

No. 15960.—BALATA.—Protests 244607, etc., of Wallace L. Gough *et al.* against the assessment of duty by the collector of customs at the port of New York. June 24, 1907.

Same as No. 15930 (*supra*).

No. 15961.—REGALIA.—Protest 251261 of Siegman & Weil against the assessment of duty by the collector of customs at the port of New York. Before Board 3. June 24, 1907. Opinion by Hay, G. A.

The importers' contention that the merchandise was free of duty as regalia under paragraph 649, tariff act of 1897, was overruled for want of evidence.

No. 15962.—MOCHA SHEEPSKINS.—Protests 95294*f*, etc., of E. J. Arbib & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 25, 1907. Opinion by McClelland, G. A.

Protests sustained on the authority of G. A. 6619 (T. D. 28248), relating to Mocha sheepskins.

No. 15963.—COLD-ROLLED STEEL.—Protests 5424*h*, etc., of Hermann Boker & Co. and protests 184574, etc., of Jos. F. McCoy Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinions by Fischer, G. A.

Protests sustained to the extent authorized by United States *v.* Crucible Steel Company (T. D. 28106).

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No. 15964.—Duplex Paper.—Protest 229768 of B. F. Drakenfeld & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6288 (T. D. 27111), relating to duplex paper.

No. 15965.—Steel Watch Chains—Metal Pencils.—Protests 242488, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

The protests related to steel watch chains and metal pencils, classified as manufactures of metal under paragraph 193, tariff act of 1897, and claimed to be dutiable as toys under paragraph 418. Assessment affirmed as to the watch chains on the authority of G. A. 6349; also as to the pencils, which consisted of metal tubes containing adjustable leads, being about 3½ inches long and susceptible of practical use. The Board was of the opinion that though of cheap construction they would not be used by children as playthings any more than other pencils would be.

No. 15966.—Finished Forgings.—Protest 248473 of De La Vergne Machine Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6069 (T. D. 26477).

No. 15967.—Fishhooks.—Protest 248547 of Wm. Mills & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Protest sustained in part on the authority of G. A. 6494 (T. D. 27764), relating to fishhooks.

No. 15968.—Pictorial Post Cards.—Protests 248301, etc., of R. Tuck & Sons Company. June 25, 1907.

Same as No. 15926 (*supra*).

No. 15969.—Post-Card Albums.—Protests 253133, etc., of R. H. Macy & Co. against the assessment of duty by the collector of customs at the port of New York. June 25, 1907.

Same as No. 15922 (*supra*).

No. 15970.—Coral Beads.—Protests 242742, etc., of Borrelli & Vitelli against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Coral beads were held dutiable as precious stones unset under paragraph 435, tariff act of 1897, as claimed by the importers. G. A. 6584 (T. D. 28131) followed.

No. 15971.—Autochrome Cards.—Protest 243167 of Henry Bischoff & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of G. A. 6369 (T. D. 27359), relating to autochrome cards.

No. 15972.—Bottles in Cases.—Protests 243849, etc., of Mark Cross Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Metal-top bottles in leather cases, classified as manufactures of metal under paragraph 193, tariff act of 1897, were claimed to be dutiable as manufactures in chief value of leather under paragraph 450. Protest sustained in part on the authority of G. A. 6569 (T. D. 28046).

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No. 15973.—BRAIDS.—Protest 244077 of Veit, Son & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

The goods were held to have been properly classified as braids under paragraph 339, tariff act of 1897.

No. 15974.—EMBOSSED CARDS.—Protest 244788 of Hensel, Bruckmann & Lorbacher against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

The protest related to folded cards embossed and sprayed, which the importers contended to have been improperly classified as manufactures of paper under paragraph 407, tariff act of 1897. Protest overruled on the authority of G. A. 5987 (T. D. 26212), relating to embossed cards.

No. 15975.—ENGRAVINGS MOUNTED ON ROLLERS.—Protest 248039 of L. Wertheimber against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

The protest related to engravings mounted on wooden rollers. They were classified as manufactures of paper under paragraph 407, tariff act of 1897, and claimed to be dutiable as printed matter under paragraph 403, relating to engravings, printed matter, etc. The Board found the articles had been printed from a wood block and stenciled in colors, and were wood engravings, and held that the sticks or rollers on which they were mounted did not affect their classification. Protest sustained.

No. 15976.—BOOKS FOR CHILDREN.—Protest 248627 of R. Tuck & Sons Company (Limited) against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Fischer, G. A.

Books for children weighing over 24 ounces each, which were classified under paragraph 400, tariff act of 1897, were held dutiable as printed matter under paragraph 403, tariff act of 1897, as claimed by the importers.

No. 15977.—RENAISSANCE LACE ARTICLES.—Protests 250600, etc., of Reichenbach & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by Howell, G. A.

Protests overruled on the authority of G. A. 6386 (T. D. 27441), relating to Renaissance lace articles.

No. 15978.—COTTON ARTICLES.—Protest 3464 *h* of Hunter & Witcombe against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by De Vries, G. A.

The protest related to cotton articles, which the Board held dutiable as cotton cloth as claimed by the importers.

No. 15979.—FIGURED ETAMINES.—Protest 143960 of John Darling & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by De Vries, G. A.

Figured goods classified as etamines or vitrages under paragraph 339, tariff act of 1897, were claimed to be dutiable as figured cotton cloth. Protest sustained in part.

No. 15980.—PROTESTS AGAINST RELIQUIDATION—FIGURED COTTONS—CORRECTION OF PREVIOUS ERROR.—Protests 150549, etc., of Hunter & Witcombe *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907.

DE VRIES, *General Appraiser:* These cases present no issues substantially different from those the subject of decision in G. A. 6608 (T. D. 28219). The issue is one of the

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proper performance of the duties of the collector on reliquidation. In the case above mentioned it was asserted by the importers that it was incumbent upon the collector to discover the dutiable particulars of certain merchandise covered by a decision of the Board of General Appraisers. The United States circuit court of appeals held with the Board that that duty was not incumbent upon the collector.

It seems that upon reliquidation of these entries the collector ascertained from the record that the imported merchandise contained extra threads which called for the assessment of the additional duty provided by paragraph 313. This he had not done in the original liquidation, and it is this against which these protests are levied.

We are of the opinion that it was entirely within his power so to do. The protests are, therefore, overruled.

No. 15981.—Cotton Cloth.—Protest 186675 of Neuss, Hesslein & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by De Vries, G. A.

As claimed by the importers, the merchandise was held dutiable as figured cotton cloth containing less than 100 threads per square inch. It had been classified as containing more than 100 threads per square inch.

No. 15982.—Embroidery Cotton.—Protest 251175 of Loeb & Schoenfeld Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 25, 1907. Opinion by De Vries, G. A.

Protests sustained on the authority of G. A. 6544 (T. D. 27915), relating to embroidery cotton.

No. 15983.—Marrons in Sirup.—Protests 156216, etc., of Park & Tilford *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of United States *v.* Schall (T. D. 27985).

No. 15984.—Sliced Mushrooms.—Protests 184886, etc., of Joseph Mach *et al.* and protest 248037 of Henry Weiss against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinions by Waite, G. A.

Protests sustained on the authority of Zanmati *v.* United States (T. D. 28054), relating to sliced mushrooms.

No. 15985.—Mushrooms in Tins.—Protests 198450, etc., of D. Martino *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Waite, G. A.

Protests sustained on the authority of Choy Chong Woh & Co. *v.* United States (T. D. 28053), relating to mushrooms in tins.

No. 15986.—Works of Art—Bronze Candlesticks.—Protest 230085 of R. F. Downing & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Waite, G. A.

Bronze candlesticks were held to be free of duty under paragraph 703, tariff act of 1897, as works of art imported for presentation to a religious institution. These candlesticks were made in the atelier of Armand-Calliat Fils, an ecclesiastical artist of reputation in Lyons, France, and the designer of many notable objects of art.

No. 15987.—Wafers.—Protests 244997, etc., of Austin Nichols & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Waite, G. A.

The protests were sustained to the extent authorized by G. A. 6591 (T. D. 28172) relating to wafers.

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No. 15988.—PRESERVED PINEAPPLES.—Protests 13593 *h*, etc., of Frame Alston & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Somerville, G. A.

Protests sustained on the authority of G. A. 6616 (T. D. 28245), relating to preserved pineapples.

No. 15989.—DIRT IN NUTS.—Protests 249241, etc., of Austin Nichols & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 25, 1907. Opinion by Somerville, G. A.

Protests overruled on the authority of G. A. 6554 (T. D. 27964), relating to dirt in nuts.

No. 15990.—PROTEST ABANDONED.—Protest 252095 of L. W. Levy & Co. June 25, 1907. Opinion by De Vries, G. A.

Same as No. 15916 (*supra*).

No. 15991.—PROTESTS ABANDONED.—Protests 118271, etc., of J. S. Johnson Company *et al.* Before Board 3, June 25, 1907.

Same as No. 15916 (*supra*).

No. 15992.—PROTESTS ABANDONED.—Protests 246603, etc., of M. Gugenheim *et al.* and protests 247354, etc., of Mark Cross Company *et al.* June 25, 1907.

Same as No. 15916 (*supra*).

No. 15993.—PROTESTS ABANDONED.—Protests 171191, etc., of Goat and Sheepskin Import Company *et al.* Before Board 1, June 25, 1907. Opinion by McClelland, G. A.

Same as No. 15916 (*supra*).

No. 15994.—PROTESTS UNSUPPORTED.—Protest 249132 of Hamburger & Co., protest 248625 of A. Strauss & Co., protest 248572 of J. & H. Rosenberg, protest 250162 of Nathan Krauskopf & Co., and protest 253851 of Eisenbach Brothers & Co. June 25, 1907.

Same as No. 15940 (*supra*).

No. 15995.—PROTESTS UNSUPPORTED.—Protests 215493, etc., of John Zimmermann Company *et al.*, protest 249429 of J. R. Simon & Co., protest 250507, etc., of Burr & Hardwick *et al.*, protests 251883, etc., of Hydeman & Lassner *et al.*, protest 252870 of Campbell, Metzger & Jacobson, and protest 253574 of Rusch & Co. June 25, 1907. Opinions by Howell, G. A.

Same as No. 15940 (*supra*).

No. 15996.—CHEMICAL GLASSWARE.—Protests 83931 *b*, etc., of Bausch & Lomb Optical Company against the assessment of duty by the collector of customs at the port of Rochester. Before Board 1, June 26, 1907. Opinion by Sharretts, G. A.

Protests sustained to the extent authorized by G. A. 6429 (T. D. 27584), relating to chemical glassware.

No. 15997.—WOOL ON THE SKIN.—Protest 253003 of Geo. S. Bush & Co. against the assessment of duty by the collector of customs at the port of Port Townsend. Before Board 1, June 26, 1907. Opinion by McClelland, G. A.

As claimed by the importers, certain wool on the skin was held dutiable at 3 cents per pound under paragraphs 358 and 360, tariff act of 1897.

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No. 15998.—Mocha Sheepskins.—Protest 199969 of American Express Company against the assessment of duty by the collector of customs at the port of Boston. June 26, 1907.

Same as No. 15962 (*supra*).

No. 15999.—Mocha Sheepskins.—Protests 164234, etc., of W. N. Jones Company against the assessment of duty by the collector of customs at the port of Petersburg. June 26, 1907.

Same as No. 15962 (*supra*).

No. 16000.—Artificial Flowers and Pot.—Protest 244335 of L. Germansky against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 26, 1907. Opinion by McClelland, G. A.

The protest related to flowers of tissue paper with sprays of green vegetable substance attached to tissue paper in the form of a flower pot. The Board held these articles to have been properly classified as artificial flowers under paragraph 425, tariff act of 1897.

No. 16001.—Enfleurage Grease—Lily-of-the-Valley Pomade.—Protests 155504, etc., of Geo. Lueders & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 26, 1907 Opinion by McClelland, G. A.

So-called pomade lily of the valley was held free of duty as enfleurage grease under paragraph 626, tariff act of 1897. Lueders *v.* United States (143 Fed. Rep., 918; T. D 26882) followed.

No. 16002.—Autochrome Post Cards.—Protest 252678 of John Reeve against the assessment of duty by the collector of customs at the port of Newport, Vt. June 26, 1907.

Same as No. 15971 (*supra*).

No. 16003.—Autochrome Post Cards.—Protest 251842 of Paul E. Trouche against the assessment of duty by the collector of customs at the port of Charleston. June 26, 1907.

Same as No. 15971 (*supra*).

No. 16004.—Anatomical Charts.—Protest 247785 of American Thermo Ware Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of Abstract 13758 (T. D. 27785), relating to anatomical charts.

No. 16005.—Illustrations—Books in Foreign Language.—Protest 209615 of P. H. Petry & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907.

The articles in controversy were claimed to be free of duty under paragraph 502, tariff act of 1897, relating to books printed exclusively in languages other than English. Protest overruled.

Fischer, *General Appraiser:* We find from the testimony and the exhibits that these so-called books are in fact pages of printed illustrations with the titles printed in English, French, and German languages on each picture. The said illustrations, with introductory matter and index in German, when bound, form an art volume, which is published abroad. The printed illustrations alone are imported, and the

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printed text above referred to does not accompany the importation. We are asked to decide that as imported such illustrations are entitled to free entry as books printed exclusively in a foreign language. It is urged in behalf of the importers that they have arranged to print in this country an English translation of the German text of the art volume, and they import the illustrations alone to be used in conjunction therewith. Whatever latitude we might be inclined to take in the interpretation of the provisions of paragraph 502, and whatever the purpose of the importers may be in importing illustrations without text of any description, the fact remains that such articles could by no means be considered as included within the meaning or intent of the paragraph in question, and which the importers rely upon in their protest.

No. 16006.—POST-CARD ALBUMS.—Protest 230118 of B. Illfelder & Co. against the assessment of duty by the collector of customs at the port of Boston. June 26, 1907.

Same as No. 15922 (*supra*).

No. 16007.—FINISHED TUBES.—Protest 244430 of Bowers Southern Dredging Company against the assessment of duty by the collector of customs at the port of Galveston. Before Board 2, June 26, 1907.

The merchandise in question, which was classified under the provision in paragraph 152, tariff act of 1897, for lap-welded tubes, was claimed to be dutiable under the provision in the same paragraph for finished tubes. Protests sustained.

FISCHER, *General Appraiser:* This case has been submitted for decision on the record and some correspondence, including a description of the goods by the examiner who passed the merchandise, approved by the special deputy collector of customs These steel tubes are described as huge pipes three-eighths of an inch in thickness, 20 inches in diameter, and 12 feet in length. They are to be used as pipes for dredging, and material is conveyed through them in deepening waterways. We find that such huge steel pipes are not of the kind for which provisions are made in the first clause of paragraph 152, which reads as follows:

Lap welded, butt welded, seamed, or jointed iron or steel boiler tubes, pipes, flues, or stays, not thinner than number sixteen wire gauge, two cents per pound.

These tubes are not "boiler tubes, pipes, flues, or stays" as therein provided, and they clearly fall within the concluding clause of paragraph 152, which provides for "all other iron or steel tubes, finished, not specially provided for," at the rate of 35 per cent ad valorem.

No. 16008.—WASTE TIN.—Protests 242307, etc., of American Can Company *et al.* against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

The protests related to so-called scrap tin, which the Board held to have been properly classified as waste under paragraph 463, tariff act of 1897, overruling the importers' contention that it was free of duty either under paragraph 483 as scrap made from American tin or under paragraph 505 as scrap brass.

No. 16009.—LEATHER BELTS.—Protest 242077 of Marshall Field & Co against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

Belts classified as composed in chief value of metal were held dutiable as manufactures in chief value of leather under paragraph 450, tariff act of 1897, as claimed by the importers.

No. 16010.—WASTE TIN.—Protests 251977, etc., of W. H. Allison against the assessment of duty by the collector of customs at the port of Detroit.

Same as No. 16008 (*supra*).

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No. 16011.—TAPE MEASURES.—Protest 231656 of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

The goods, classified as manufactures in chief value of flax, under paragraph 347, tariff act of 1897, were claimed to be dutiable under paragraph 336, as designed for use in the manufacture of measuring tapes. The protest was overruled, the Board finding the articles to be complete tapes.

No. 16012.—BONE SWORDS.—Protest 208346 of Chas. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

Protest overruled on the authority of G. A. 6612 (T. D. 28229), relating to bone swords.

No. 16013.—ENGRAVERS' PLATES.—Protests 248719, etc., of W. B. Sellers against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of G. A. 6472 (T. D. 27684), relating to engravers' plates.

No. 16014.—PERIODICALS—ADVERTISING MATTER.—Protest 247283 of Apollinaris Agency Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907.

The merchandise, which was classified as books under paragraph 403, tariff act of 1897, was claimed to be free of duty as periodicals under paragraph 621. Protest overruled.

FISCHER *General Appraiser:* This protest has been submitted for decision on the official sample and without further testimony or evidence of any kind. The paper-covered publication in question purports to be a periodical issued monthly at a stated published price and with the titles of the subjects contained in the issue printed on the cover of the book. Other than the fact that the book states it is published monthly and to be had at a certain price, there is no evidence before us that such is the case or that it is handled by dealers or persons who usually have such publications for sale. An examination of the sample book before us would convince us, on the contrary, that it is intended to be given away instead of sold, as a means to advertise "The Hotel Ritz," "Apollinaris," etc.

The publication is called the Ritz Monthly; and the importation the subject of the protest arrived consigned to the Apollinaris Agency Company of New York, and shipped by the Apollinaris Company (Limited), of London. It is profusely illustrated, and in addition to the usual space alloted to advertisements the reading matter as well is devoted to such purposes and acquaints the reader with the advantages of the "Hotel Ritz," its service, silverware, furnishings, etc.; apollinaris water, its peculiar softness, antidyspeptic qualities, etc.; "Establishment of scientific beauty," "Power of beauty;" lace, its cleaning, etc. All this the reader is informed by means of well-worded articles or essays which deals with the subjects mentioned and advertise some place, article, or person. A compilation of this kind, though it may have literary merit and in fact have a mere incidental insertion of some topic of current interest, still fails in every way to comply with the requirements of the definition of a periodical as provided for under paragraph 621 of the tariff.

No. 16015.—POST CARDS IN PART OF RUBBER.—Protests 246914, etc., of Meffert & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

These protests related to post cards composed of paper and soft rubber, which were classified as manufactures of paper under paragraph 407, tariff act of 1897, and claimed to be dutiable as lithographic prints under paragraph 400. Protests overruled on the authority of G. A. 6424 (T. D. 27430).

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No. 16016.—WILLOW SHEETS—CHIP ROLLS.—Protests 199826, etc., of J. Zimmermann Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by Howell, G. A.

The merchandise in question, which was classified as manufactures of chip under paragraph 449, tariff act of 1897, was claimed to be dutiable under paragraph 409 as willow sheets or squares. Protests overruled.

HOWELL, *General Appraiser:* * * * The pertinent portion of paragraph 409 reads as follows:

Braids, plaits, laces, and willow sheets or squares, composed wholly of straw, chip, grass, palm leaf, willow, osier or rattan, suitable for making or ornamenting hats, bonnets, or hoods, not bleached, dyed, colored or stained, fifteen per centum ad valorem; if bleached, dyed, colored or stained, twenty per centum ad valorem.

The merchandise consists of a fabric woven wholly of chip, 3 feet wide, and imported in rolls 40 yards in length. The fabric is stitched on the sides or edges with cotton threads to prevent it from unravelling.

Under the decision of the circuit court for the southern district of New York in Schiff *v.* United States (140 Fed. Rep., 63; T. D. 26457), which was affirmed by the circuit court of appeals in United States *v.* Schiff (145 Fed. Rep., 1023; T. D. 27227), we think these cotton threads are to be disregarded and the fabric is to be treated as composed wholly of chip. But is it "willow sheets or squares composed wholly of * * * chip * * * willow * * * suitable for making or ornamenting hats?"

In special reports to the collector which accompany the protests, the appraiser states that the usual commercial sheets or squares "are flat pieces of fabric made about 3 feet square."

The only testimony in support of the claim made in the protests is that of one witness, an officer of the corporation for whom the goods were imported. This witness testified that the merchandise was known commercially in his business as willow sheets. He admitted, however, that he only dealt in it in a very small way, and only sold it in New York City, and that he was not familiar with the name under which it was known generally throughout the trade and commerce of this country. When asked if it had more than one name or whether it was ever called anything but willow sheets, he replied: "I have never heard it called any different myself. It might be called matting. *Perhaps it might pass as matting, but that is not known in our business.*" He also admitted that the willow sheet or squares imported from countries other than Japan, from whence this importation came, are square sheets, and this would tend to confirm the report of the appraiser.

On this record we do not think it can be said that the importers have borne the burden which the law places upon them of overcoming the presumption of correctness which attaches to the return of the appraiser, and the decision of the collector. It has been held that the testimony of one interested witness is not sufficient to prove commercial designation. Berbecker *v.* Robertson (152 U. S., 373); Woolworth *v.* United States (113 Fed. Rep., 1007); Neuss *v.* United States (142 Fed. Rep., 281). And in this case the testimony is particularly weak, as the witness is shown to have had only very limited experience with the article in question.

Furthermore, we doubt whether an article that is 3 feet wide and in rolls 40 yards long is a "willow sheet or square suitable for making or ornamenting hats," and we should certainly require more convincing testimony than has been offered in this case before making a finding to that effect.

No. 16017.—JUTE FABRICS IN PART OF FLAX.—Protest 253025 of Trorlicht, Duncker & Renard against the assessment of duty by the surveyor of customs at the port of St. Louis. Before Board 2, June 26, 1907.

Goods which were classified as manufactures of jute under paragraph 347, tariff act of 1897, were claimed to be dutiable under paragraph 341, relating to fabrics of "single jute yarns." Protest overruled.

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DE VRIES, *General Appraiser:* The question is one of law, there being no dispute as to the facts. The cloth is composed of jute yarns and flax yarns, the jute constituting about 55 per cent of the value of the article.

The protestants cite G. A. 4916 (T. D. 22988) in support of their contention. That decision covered dyed burlaps, the Board holding that the dyeing did not remove them from the *eo nomine* provision for "burlaps" in the free list of the act of 1894. The reason for the classification under paragraph 347 in this case is not the fact that the goods are dyed, but because they are not composed of "single jute yarns" but of both jute and flax yarns. The fact that flax constitutes about 45 per cent of the value of the fabric excludes it, we think, from the provisions of paragraph 341.

No. 16018.—EMBROIDERED HOSIERY.—Protest 251039 of Reins & Meiss against the assessment of duty by the surveyor of customs at the port of Cincinnati. Before Board 2, June 26, 1907. Opinion by De Vries, G. A.

The goods were held to have been properly classified as embroidered hosiery under paragraph 339, tariff act of 1897.

No. 16019.—COTTON CLOTH.—Protests 224153, etc., of Sterling & Welch Company against the assessment of duty by the collector of customs at the port of Cleveland. Before Board 2, June 26, 1907. Opinion by De Vries, G. A.

The Board held a portion of the goods classified as embroideries to be dutiable as figured cotton cloth, as claimed by the importers. In other respects the assessment was affirmed.

No. 16020.—FLAX NOILS.—Protest 57480*b* of De Long & Coffin against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 2, June 26, 1907. Opinion by De Vries, G. A.

Protest sustained on the authority of G. A. 6558 (T. D. 27997), relating to flax noils.

No. 16021.—COTTON CLOTH.—Protests 123213, etc., of Bamberger, Stern & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by De Vries, G. A.

Goods classified as etamines under paragraph 339, tariff act of 1897, were held dutiable as cotton cloth, as claimed by the importers.

No. 16022.—WAFERS.—Protest 251063 of Isaac McNiven against the assessment of duty by the collector of customs at the port of Niagara Falls. June 26, 1907.

Same as No. 15987 (*supra*).

No. 16023.—SOY SAUCE.—Protests 243297, etc., of Mann Yen Lowe & Co. *et al.* against the assessment of duty by the collector of customs at the port of Boston. Before Board 3, June 26, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Abstract 12761 (T. D. 27591) and Abstract 13636 (T. D. 27745), relating to soy sauce.

No. 16024.—MUSHROOMS IN TINS.—Protest 212046 of Chas. Ed. Heise & Co. and protest 189162 of Garbini Brothers & Co. against the assessment of duty by the collector of customs at the port of San Francisco. June 26, 1907.

Same as No. 15985 (*supra*).

No. 16025.—SLICED MUSHROOMS.—Protest 193507 of Nom Kin Low against the assessment of duty by the collector of customs at the port of Portland, Oreg. June 26, 1907.

Same as No. 15984 (*supra*).

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No. 16026.—ARROWROOT STARCH.—Protests 59109*b*, etc., of Smith, Kline & French Company against the assessment of duty by the collector of customs at the port of Philadelphia. Before Board 3, June 26, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Middleton *v.* United States (151 Fed. Rep., 16; T. D. 27749).

No. 16027.—PROTEST FILED TOO LATE.—Protest 244424 of Cerecedo Hermanos & Co. June 26, 1907.

Same as No. 15929 (*supra*).

No. 16028.—GAUGE OF OLIVE OIL.—Protest 242848 of Moral & Co. S. en C. against the assessment of duty by the collector of customs at the port of San Juan. June 26, 1907.

Same as No. 15911 (*supra*).

No. 16029.—PRESERVED PINEAPPLES.—Protests 52135*b*, etc., of Oriental American Company *et al.* against the assessment of duty by the collector of customs at the port of Portland, Oreg. June 26, 1907.

Same as No. 15988 (*supra*).

No. 16030.—PRESERVED PINEAPPLES.—Protests 47907*b*, etc., of Macondray & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Francisco. June 26, 1907.

Same as No. 15988 (*supra*).

No. 16031.—GAUGE OF OLIVE OIL.—Protests 250239, etc., of Geo. A. Paturel *et al.* against the assessment of duty by the collector of customs at the port of New York. June 26, 1907.

Same as No. 15911 (*supra*).

No. 16032.—PRESERVED PINEAPPLES.—Protests 91856*f*, etc., of Henry Peabody & Co. *et al.* June 26, 1907.

Same as No. 15988 (*supra*).

No. 16033.—FRUIT BOXES—AMERICAN SHOOKS.—Protests 29542*h*, etc., of Sgobel & Day *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907. Opinion by Somerville, G. A.

The protests related to fruit boxes alleged to be dutiable at the rate provided in paragraph 205, tariff act of 1897, for such boxes in which the sides, tops, and bottoms are made of American shooks. Protests overruled for want of evidence and on the authority of G. A. 5932 (T. D. 26066).

No. 16034.—HOUSEHOLD EFFECTS—AUTOMOBILE.—Protest 232061 of Mrs. W. W. Kimball against the assessment of duty by the collector of customs at the port of Chicago. Before Board 3, June 26, 1907.

The protest related to an automobile, which was claimed to be entitled to admission free of duty under paragraph 504, tariff act of 1897, relating to household effects used abroad not less than one year. Protest overruled.

HAY, *General Appraiser:* An automobile purchased in Paris came into the possession of its owner on October 26, 1905, and was entered at the port of Chicago November 24, 1906. It appears from the papers that the protestant departed from Europe for the United States September 20, 1906, before which date the automobile was delivered to the American Express Company for shipment to Chicago, from which it seems to be clear that the machine could not have been used by her for not less than one year. It is

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sought by the protest to raise the question whether the provision of the law requiring actual use for one year is not complied with in effect by proof of one year's possession. The language of paragraph 504 is explicit. To entitle one to the benefit of its provisions the article for which free entry is claimed must, under its direct language, be "actually used abroad by them not less than one year." This automobile was purchased October 26, 1905, and the owner left Europe for the United States September 20, 1906, a little less than eleven months after the purchase of the machine. It could not, therefore, have been "actually used abroad" by her "not less than one year."

No. 16035.—CARNAUBA WAX.—Protest 252290 of C. B. Richard & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907.

The protest related to a substance invoiced as carnauba, which was classified as an unenumerated manufactured article under section 6, tariff act of 1897, and claimed to be free of duty under section 695. Protests sustained.

HAY, *General Appraiser:* The appraiser reports that he submitted a sample of the merchandise to the United States chemist for analysis, and it was found to be of the following composition: Fifty-four per cent solid acids, chiefly resin acids; 10 per cent solid paraffin; 36 per cent unsaponifiable compounds (resins and probably solid alcohols).

In Morningstar's case, G. A. 6609 (T. D. 28220), the Board held certain carnauba wax, containing more paraffin in its composition than the article here under consideration, entitled to free admission under paragraph 695, which provides for "wax, vegetable or mineral." The commodity is substantially the same as was the subject of that decision. The difference in the proportion of the constituent elements as shown by the chemical analysis should not affect the classification.

No. 16036.—PETROLEUM PRODUCTS.—Protest 247494 of L. Sonneborn Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of Bergeresch's case, G. A. 6405 (T. D. 27507), relating to petroleum products.

No. 16037.—GROUND CARBON.—Protests 245573, etc., of Thos. Meadows & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907. Opinion by Hay, G. A.

Protests sustained on the authority of G. A. 6623 (T. D. 28252), relating to ground carbon, except protests 246728–9, which were overruled because the proper contention was not made therein.

No. 16038.—SOAPSTONE SQUARES—LAVA.—Protest 215531 of M. Kirschberger & Co. against the assessment of duty by the collector of customs at the port of New York June 26, 1907.

Same as No. 15932 (*supra*).

No. 16039.—ROSARIES.—Protest 29296*h* of I. Emrich & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907.

The articles in controversy were rosaries, classified as jewelry under paragraph 434, tariff act of 1897, and claimed to be dutiable under paragraph 193 as articles composed in part of metal. This contention was sustained as to items composed of real amethysts or garnets drilled and strung on gold or silver chains, each chain having a heart-shaped centerpiece and crucifix of gold or silver, the stones in each instance being the component material of chief value.

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HAY, *General Appraiser:* * * * As to the remainder of the goods, those marked "I E 2" on the invoice, it would seem well settled by judicial decision that these are properly assessable under paragraph 408 as articles composed wholly or in part of beads. It appears from the testimony that these rosaries are not used as ornaments or known as jewelry; they are used for devotional purposes. In the case of Benziger *v.* Robertson (122 U. S., 211), articles similar to, if not identical with, those under consideration were held by the Supreme Court of the United States to be dutiable under a very similar paragraph of a former law; and in Shallus' case, G. A. 4084 (T. D. 19036), the same class of goods were held to be dutiable under paragraph 408 of the act of 1897. The testimony in the case at bar does not tend in any way to differentiate the rosaries described in the second paragraph of this decision from those which were under consideration in the cases cited. There is no claim that the merchandise should be dutiable under paragraph 408, and the rate of duty is the same as that under paragraph 434, under which the collector assessed them. As to the goods marked "I E 2" on the invoice, the protest is therefore overruled without affirming the action of the collector.

No. 16040.—PROTESTS UNSUPPORTED.—Protests 248270, etc., of Knauth, Nachod & Kühne *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 26, 1907. Opinion by Fischer, G. A.

Protests overruled for want of merit.

No. 16041.—PROTEST UNSUPPORTED.—Protest 253027 of C. H. Wyman & Co. against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 16040 (*supra*).

No. 16042.—PROTESTS UNSUPPORTED.—Protests 254351, etc., of O. G. Hempstead & Son against the assessment of duty by the collector of customs at the port of Philadelphia. June 26, 1907. Opinion by Howell, G. A.

Same as No. 16040 (*supra*).

No. 16043.—PROTESTS UNSUPPORTED.—Protests 221248, etc., of Reiss & Brady, protest 248020 of Rojas, Perez & Co., protests 250000, etc., of E. Hoffman & Son *et al.*, protests 252800, etc., of L. Wertheimber, protests 252971, etc., of G. Sasso & Sons *et al.*, and protests 230546, etc., of F. B. Vandegrift & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 26, 1907. Opinions by McClelland, G. A.

Protests overruled for want of merit.

No. 16044.—PROTESTS UNSUPPORTED.—Protests 223854, etc., of Scruggs, Vandervoort & Barney Dry Goods Company *et al.* against the assessment of duty by the surveyor of customs at the port of St. Louis.

Same as No. 16043 (*supra*).

No. 16045.—PROTEST UNSUPPORTED.—Protest 251068 of Moses Norris against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 16043 (*supra*).

No. 16046.—PROTESTS UNSUPPORTED. — Protests 251743, etc., of Bolognesi, Hartfield & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 26, 1907. Opinion by Hay, G. A.

Protests overruled for want of merit.

No. 16047.—PROTEST UNSUPPORTED.—Protest 251982 of Stengel & Rothschild against the assessment of duty by the collector of customs at the port of Newark.

Same as No. 16046 (*supra*).

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No. 16048.—PROTESTS UNSUPPORTED —Protests 252999, etc., of E. Denike against the assessment of duty by the collector of customs at the port of Laredo.

Same as No. 16046 (*supra*).

No. 16049.—PROTEST UNSUPPORTED.—Protest 249869 of Park & Tilford. Opinion by Somerville, G. A.

Same as No. 16046 (*supra*).

No. 16050.—POWDER PUFFS.—Protests 250786, etc., of Deitsch Brothers & Co. *et al.* and protests 250926, etc., of Marcel Schmitt *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinions by Lunt, G. A.

Protests overruled on the authority of G. A. 6611 (T. D. 28222), relating to powder puffs.

No. 16051.—METAL STEINS.—Protest 62883 *b* of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Galveston. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

The protest related to earthenware steins with metal tops and to toy paints. The importers' contention was sustained as to the steins only, which were held dutiable as manufactures of metal under paragraph 198, tariff act of 1897.

No. 16052.—GLASS REFLECTORS.—Protest 226022 of Leo Popper & Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6233 (T. D. 26919), relating to glass reflectors.

No. 16053.—CORAL FOR JEWELRY PURPOSES.—Protest 216095 of Morris Gugenheim against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Protest sustained on the authority of G. A. 6584 (T. D. 28131), relating to coral for jewelry purposes.

No. 16054.—STRUNG BEADS.—Protests 195169, etc., of A. Steinhardt & Bro., protests 4163*f*, etc., of L. Metzger & Co. *et al.*, protests 175524, etc., of C. Wildermann Company *et al.*, protests 148602, etc., of H. Wolff & Co. *et al.*, and protests 133335, etc., of John D. Gluck & Son *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinions by Sharretts, G. A.

Protests overruled on the authority of G. A. 6610 (T. D. 28221), relating to strung beads.

No. 16055.—SPANGLED ORNAMENTS.—Protests 27035 *h*, etc., of Sundheimer Brothers *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Protests overruled on the authority of G. A. 6323 (T. D. 27240), relating to spangled articles.

No. 16056.—VINAIGRETTE BOTTLES.—Protests 24446 *h*, etc., of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Vinaigrette bottles, classified as jewelry, were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

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No. 16057.—ODOR FLASKS.—Protests 91377*f*, etc., of Spiegelberg & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Odor flasks, classified as jewelry, were held dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

No. 16058.—SWIVELS.—Protest 182993 of Albert Lorsch & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

On the authority of G. A. 6330 (T. D. 27255), the Board held certain swivels dutiable as manufactures of metal under paragraph 193, tariff act of 1897, as claimed by the importers.

No. 16059.—HAT PINS.—Protest 182078 of Callender, McAuslan & Troup Company against the assessment of duty by the collector of customs at the port of Providence. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

Protests sustained in part on the authority of G. A. 6139 (T. D. 26653), relating to hat pins.

No. 16060.—HAT PINS.—Protest 211059 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of Philadelphia.

Same as No. 16059 (*supra*).

No. 16061.—PINS—ORNAMENTS—TOYS—BEADED GOODS.—Protests 47732*b*, etc., of Moses Norris *et al.* against the assessment of duty by the collector of customs at the port of Baltimore. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

The protests related to various articles classified as jewelry and beaded goods. The importers' contentions with respect thereto were sustained to the extent authorized by G. A. 6139 (T. D. 26653), Abstract 5635 (T. D. 26248), Tiffany *v.* United States (T. D. 25316), and G. A. 6374 (T. D. 27382).

No. 16062.—PINS—ORNAMENTS—TOYS—BEADED GOODS.—Protests 47771*b* of Wilfred Schade & Co. against the assessment of duty by the collector of customs at the port of Newport News.

Same as No. 16061 (*supra*).

No. 16063.—PINS—ORNAMENTS—TOYS—BEADED ARTICLES—IMITATION PEARLS—WAX BEADS—FOIL-BACKED JEWELS.—Protests 52219*f*, etc., of Geo. Borgfeldt & Co., protests 120090, etc., of Cohn & Rosenberger, protests 152720, etc., of Wells, Fargo & Co. *et al.*, protests 44910, etc., of A. & H. Veith, and protest 185142 of A. Steinhardt & Bros. against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Sharretts, G. A.

These protests related to a large variety of goods, such as pins, ornaments, toys of various kinds, metal purses, wax beads, imitation pearls, foil-backed jewels, etc. The various contentions made by the importers were disposed of in harmony with the following authorities: G. A. 6139 (T. D. 26653), Abstract 5635 (T. D. 26248), Tiffany *v.* United States (T. D. 25316), G. A. 6374 (T. D. 27382), G. A. 6625 (T. D. 28254), G. A. 6088 (T. D. 26554), G. A. 6376 (T. D. 27390), and G. A. 6380 (T. D. 27420).

No. 16064.—PROTEST INDEFINITE.—Protest 253408 of J. M. Colpas against the assessment of duty by the collector of customs at the port of Burlington. Before Board 1, June 27, 1907. Opinion by McClelland, G. A.

The protest was dismissed because too vague and indefinite.

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No. 16065.—SHELF PAPER.—Protests 230084, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 27, 1907.

So-called shelf paper, classified as manufactures of paper under paragraph 407, tariff act of 1877, was claimed to be dutiable under paragraph 402 or 403 as printed matter. Assessment affirmed.

FISCHER, *General Appraiser:* * * * From the testimony and the sample offered in evidence, we find that this paper is called shelf paper; that it is in a finished form, designed and adapted for a particular purpose; and that its name, shelf paper, is indicative of its use. It is a narrow paper with one edge scalloped and is imported in rolls of certain lengths. This paper is ornamented with a design in colors along the scalloped edge of the paper, so that in use the portion which hangs from the shelf has a decorative effect.

There is nothing urged upon our consideration which would warrant a finding in favor of the importers in these cases. Their claim that this paper is dutiable as printed matter, under paragraph 403, has no real merit. Shelf paper is clearly not the printed matter for which provision is made in said paragraph. The printing of such paper with colors or designs merely adds a feature to an otherwise completed article, adapted for a particular and useful purpose. The printing is incidental and would not carry the classification of the goods, within the ruling of United States *v.* Hensel (T. D. 27856).

The only other question to be considered would then be, Is this article a paper not specially provided for under paragraph 402, as claimed? We think not. It has lost its identity as ordinary paper. It has been cut to a uniform width, the edge has been cut out or scalloped, and, after having been run through a press to give it its pattern, has been put up in rolls of the usual lengths, and thus assumes a finished form. We hold that the merchandise is properly dutiable, as assessed, at 35 per cent, as a manufacture of paper under paragraph 407 of the tariff, and on the authority of United States *v.* Hensel (*supra*) and Kraut *v.* United States (134 Fed. Rep., 701; T. D. 25829), affirmed by the circuit court of appeals (142 Fed. Rep., 1037; T. D. 26946).

No. 16066.—WIRE VALUED AT OVER FOUR CENTS PER POUND.—Protests 260271, etc., of Jos. F. McCoy Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 27, 1907.

These protests involve the construction of paragraph 137, tariff act of 1897, providing among other things a rate of 2 cents per pound on round steel wire smaller than No. 16 wire gauge, with a proviso that "all the foregoing valued at more than four cents per pound shall pay forty per centum ad valorem."

FISCHER, *General Appraiser:* * * * The collector takes the ground that the 40 per cent rate in said paragraph is a minimum rate, and that the specific rate of 2 cents per pound being higher than the ad valorem duty of 40 per cent, it should prevail on such wire.

The precise question herein raised was decided adversely to the contention of the collector in G. A. 4289 (T. D. 20171), and no appeal was taken from that decision. We adhere to the opinion therein expressed that the words of the paragraph do not justify the construction the collector contends for, and that 40 per cent ad valorem is a fixed rate imposed on all wire valued at over 4 cents per pound, and not a minimum rate. The protests are sustained and the decision of the collector reversed in each case.

No. 16067.—COTTON CLOTH.—Protests 166817, etc., of E. C. Carter against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 27, 1907. Opinion by De Vries, G. A.

The importers contended that the merchandise had been improperly classified as figured cotton cloth under paragraph 313, tariff act of 1897. This contention was sustained as to protest 166817.

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No. 16068.—Oak Plank Linoleum.—Protest 232111 of E. P. Ackerman against the assessment of duty by the collector of customs at the port of Los Angeles. Before Board 2, June 27, 1907. Opinion by De Vries, G. A.

Protest sustained on the authority of G. A. 6633 (T. D. 28291), relating to oak plank linoleum.

No. 16069.—Chocolate Confectionery—Wafers.—Protests 127850, etc., of Seville Packing Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 27, 1907.

The articles in controversy, which were classified as confectionery under paragraph 212, tariff act of 1897, were claimed to be dutiable under section 6 as unenumerated manufactured articles. This contention was sustained as to goods similar to those covered by United States *v.* Meadows (T. D. 28004), but as to certain chocolate was overruled.

Waite, *General Appraiser:* * * * The goods described on invoices as "Venice chocolate finger," represented by Exhibit 11, consists of bars of sweet chocolate with a slight filling of pastry, chocolate preponderating largely in quantity and evidently in value. The Board is of the opinion that as to these articles the protests should be overruled. As to the goods invoiced as "chocolate table" and "chocolate boudoir," the testimony shows that they are of the same material and general nature as the "Venice chocolate finger," differing only in shape; and they are therefore held properly assessed. The record is insufficient to show that the merchandise described as "chocolate drop" is not confectionery, and the duty as assessed is therefore held to be correct.

No. 16070.—Olives in Casks.—Protests 242343, etc., of Sucesores de L. Villamil & Co. *et al.* against the assessment of duty by the collector of customs at the port of San Juan. Before Board 3, June 27, 1907. Opinion by Waite, G. A.

Protests overruled on the authority of Lomba *v.* United States (T. D. 27707), relating to olives in casks.

No. 16071.—Statuary—Bas-Relief—Protest 249555 of Austin Baldwin & Co against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 27, 1907. Opinion by Waite, G. A.

On the authority of G. A. 5225 (T. D. 24048) the Board overruled the importers' contention that bas-relief was dutiable as statuary.

No. 16072.—Fruit Boxes—American Shooks.—Protests 30797 *h*, etc., of Dominici Brothers. June 27, 1907.

Same No. 16033 (*supra*).

No. 16073.—Smokers' Articles—Cigar Lighters.—Protests 247860 of Reiff & Bethke against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 27, 1907. Opinion by Hay, G. A.

So-called cigar lighters were held to have been properly classified as smokers' articles under paragraph 459, tariff act of 1897. Abstract 13785 (T. D. 27785) followed.

No. 16074.—Protests Abandoned.—Protests 250308, etc., of Strohmeyer & Arpe Company *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 27, 1907. Opinion by Lunt, G. A.

Protests abandoned.

No. 16075.—Protests Abandoned.—Protests 16610 *h*, etc., of Samstag & Hilder Brothers *et al.* and protests 220167, etc., of Cohn & Rosenberger *et al.* Opinions by Sharretts, G. A.

Same as No. 16074 (*supra*).

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No. 16076.—PROTESTS UNSUPPORTED.—Protests 249984, etc., of M. Gardner & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 27, 1907. Opinion by De Vries, G. A.

Protests overruled for want of merit.

No. 16077.—PROTESTS UNSUPPORTED.—Protests 250290, etc., of J. & H. Rosenberg. Opinion by Fischer, G. A.

Same as No. 16076 (*supra*).

No. 16078.—CORAL.—Protests 170865, etc., of Isaacs, Vought & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 28, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6584 (T. D. 28181), relating to coral.

No. 16079.—TELESCOPE SIGHTS FOR REVOLVERS.—Protests 248030, etc., of Von Lengerke & Detmold against the assessment of duty by the collector of customs at the port of New York. Before Board 1, June 28, 1907. Opinion by Sharretts, G. A.

Protests sustained on the authority of G. A. 6559 (T. D. 27998), relating to telescope sights for revolvers.

No. 16080.—COMBINATION PENHOLDERS CONTAINING ERASERS.—Protests 230090, etc., of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of Abstract 12878 (T. D. 27612), relating to combination penholders containing erasers.

No. 16081.—BOOKS WITH LITHOGRAPHIC COVERS.—Protest 249732 of E. P. Dutton & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by Fischer, G. A.

Protests sustained on the authority of G. A. 6579 (T. D. 28126), relating to books with lithographic covers.

No. 16082.—POST-CARD ALBUMS—FEATHERSTITCH BRAIDS.—Protest 228510 of Geo. Borgfeldt & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by Fischer, G. A.

Protests overruled on the authority of G. A. 6500 (T. D. 27782), relating to post-card albums, and G. A. 6404 (T. D. 27506), relating to featherstitch braids.

No. 16083.—ZINC PATTERN PLATES.—Protests 247890, etc., of J. A. & W. Bird & Co against the assessment of duty by the collector of customs at the port of Boston. Before Board 2, June 28, 1907.

Zinc pattern plates, classified as manufactures of zinc under paragraph 193. tariff act of 1897, were claimed to be dutiable under paragraph 166, relating to plates for printing. Assessment affirmed.

FISCHER, *General Appraiser:* * * * We find from the testimony of the importers' witness and from the special reports of the local appraiser that the articles are plates of zinc on which a pattern for calico printing has been cut. These plates are pressed against copper rollers, which take the impression of the pattern; and from these copper rollers the printing of the cloth is done. The basis of the claim in the protests is that the plates imported are "plates for printing;" but we think it obvious from the description given that this claim is in error. They are not used for printing, but as models or patterns from which copper rollers are made.

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In G. A. 4650 (T. D. 21975) the Board, following in principle the case of Forbes *v.* Worthington (132 U. S., 655), held that an engraved steel plate used in the manufacture of plate glass was not dutiable under paragraph 166; and in G. A. 5884 (T. D. 25913) that metal disks used in making the "records" for gramophones and similar machines, a case on all fours with those at bar, were not dutiable as plates for printing, on the ground that paragraph 166 applies only to plates used "for printing" and none others.

No. 16084.—Cotton Cloth.—Protests 7032*h*, etc., of R. R. MacLea Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by De Vries, G. A.

The protests were sustained to the extent of holding that a portion of the goods had been improperly subjected to the duty provided in paragraph 313, tariff act of 1897, for cotton cloth.

No. 16085.—Protests Insufficient.—Protests 137016, etc., of P. K. Wilson & Son against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by De Vries, G. A.

The protests were held insufficient on the authority of Boker *v.* United States (145 Fed. Rep., 1022). Note G. A. 6588 (T. D. 28159).

No. 16086.—Scholars' Companions.—Protest 230085 of A. Strauss & Co. against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinion by De Vries, G. A.

So-called scholars' companion or pencil boxes were held to have been properly classified as composed in chief value of cotton under paragraph 322, tariff act of 1897.

No. 16087.—Olives in Kegs.—Protests 178802, etc., of Scrs. de L. Villamil & Co. *et al.* June 28, 1907.

Same as No. 16070 (*supra*).

No. 16088.—Sour Cream.—Protest 242311 of W. H. Tummonds against the assessment of duty by the collector of customs at the port of Port Huron. Before Board 3, June 28, 1907. Opinion by Waite, G. A.

Protest overruled on the authority of G. A. 6152 (T. D. 26720), relating to sour cream.

No. 16089.—Protest Abandoned.—Protest 254131 of Pike Manufacturing Company against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 28, 1907.

Protest abandoned.

No. 16090.—Protests Abandoned.—Protests 206285, etc., of F. H. Shallus against the assessment of duty by the collector of customs at the port of Baltimore.

Same as No. 16089 (*supra*).

No. 16091.—Protests Abandoned.—Protests 250077, etc., of Theo. Ascher Company *et al.* against the assessment of duty by the collector of customs at the port of Chicago. Before Board 2, June 28, 1907. Opinion by Fischer, G. A.

Protest abandoned.

No. 16092.—Protests Abandoned.—Protest 249731, etc., of E. P. Dutton & Co. *et al.* against the assessment of duty by the collector of customs at the port of New York.

Same as No. 16091 (*supra*).

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No. 16093.—PROTESTS UNSUPPORTED.—Protest 253257 of E. A. Wolff, protests 250887, etc., of J. & H. Rosenberg *et al.*, protests 249413, etc., of Neuss, Hesslein & Co., and protest 180918 of Sisson Brothers & Weldon Company against the assessment of duty by the collector of customs at the port of New York. Before Board 2, June 28, 1907. Opinions by De Vries, G. A.

Protests overruled for want of merit.

No. 16094.—PROTESTS UNSUPPORTED.—Protest 253066 of Cozzens, Elbers & Prankard, protests 250671, etc., of A. Steinhardt & Bro., protest 249597 of G. F. A. Bondies, protests 230282, etc., of N. Haddad *et al.*, protests 210375, etc., of C. Joseph *et al.*, and protests 250019, etc., of J. & D. Lehman *et al.* Opinions by Howell, G. A.

Same as No. 16093 (*supra*).

No. 16095.—PROTESTS UNSUPPORTED.—Protests 251894, etc., of C. G. Eckstein, protest 251270 of Strauss Brothers & Co., protest 250003 of Jas. G. Johnson & Co., protest 248029 of F. B. Vandegrift & Co., and protest 219252 of Baum, Luiz & Cohen. Opinions by Fischer, G. A.

Same as No. 16093 (*supra*).

No. 16096.—PROTEST UNSUPPORTED.—Protest 210469 of Morris Goldberg against the assessment of duty by the collector of customs at the port of New York. Before Board 3, June 28, 1907. Opinion by Somerville, G. A.

Protest overruled for want of merit.

No. 16097.—PROTEST UNSUPPORTED.—Protest 250299 of Sgobel & Day. Opinion by Waite, G. A.

Same as No. 16096 (*supra*).

No. 16098.—PROTESTS UNSUPPORTED.—Protests 251276, etc., of Straus Brothers & Co. *et al.*, protests 251009, etc., of A. A. Vantine & Co. *et al.*, protests 250009, etc., of Kronfeld, Saunders & Co., protests 249432, etc., of Robert Adams & Co. *et al.*, protest 247388 of L. Erstein & Bro., protests 229818, etc., of Neuss, Hesslein & Co., protests 82601*f*, etc., of J. & H. Rosenberg *et al.*, and protests 251305, etc., of P. K. Wilson & Son. June 25, 1907. Opinions by De Vries, G. A.

Same as No. 15940 (*supra*).

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